

[Proposed Substitute for H.R. 10]

1 **SECTION 1. SHORT TITLE; PURPOSES; TABLE OF CON-**
2 **TENTS.**

3 (a) SHORT TITLE.—This Act may be cited as the
4 “Financial Services Act of 1998”.

5 (b) PURPOSES.—The purposes of this Act are as fol-
6 lows:

7 (1) To enhance competition in the financial
8 services industry, in order to foster innovation and
9 efficiency.

10 (2) To ensure the continued safety and sound-
11 ness of depository institutions.

12 (3) To provide necessary and appropriate pro-
13 tections for investors and ensure fair and honest
14 markets in the delivery of financial services.

15 (4) To provide for appropriate functional regu-
16 lation of insurance activities.

17 (5) To reduce and, to the maximum extent
18 practicable, to eliminate the legal barriers preventing
19 affiliation among depository institutions, securities
20 firms, insurance companies, and other financial serv-
21 ice providers and to provide a prudential framework
22 for achieving that result.

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1 (6) To enhance the availability of financial serv-
2 ices to citizens of all economic circumstances and in
3 all geographic areas.

4 (7) To enhance the competitiveness of United
5 States financial service providers internationally.

6 (8) To ensure compliance by depository institu-
7 tions with the provisions of the Community Rein-
8 vestment Act of 1977 and enhance the ability of de-
9 pository institutions to meet the capital and credit
10 needs of all citizens and communities, including un-
11 derserved communities and populations.

12 (c) TABLE OF CONTENTS.—The table of contents for
13 this Act is as follows:

Sec. 1. Short title; purposes; table of contents.

TITLE I—FACILITATING AFFILIATION AMONG SECURITIES FIRMS,
INSURANCE COMPANIES, AND DEPOSITORY INSTITUTIONS

Subtitle A—Affiliations

Sec. 101. Glass-Steagall Act reformed.

Sec. 102. Activity restrictions applicable to bank holding companies which are
not financial holding companies.

Sec. 103. Financial holding companies.

Sec. 104. Certain State laws preempted.

Sec. 105. Mutual bank holding companies authorized.

Sec. 106. Prohibition on deposit production offices.

Sec. 107. Clarification of branch closure requirements.

Sec. 108. Amendments relating to limited purpose banks.

Subtitle B—Streamlining Supervision of Financial Holding Companies

Sec. 111. Streamlining financial holding company supervision.

Sec. 112. Elimination of application requirement for financial holding compa-
nies.

Sec. 113. Authority of State insurance regulator and Securities and Exchange
Commission.

Sec. 114. Prudential safeguards.

Sec. 115. Examination of investment companies.

Sec. 116. Limitation on rulemaking, prudential, supervisory, and enforcement
authority of the Board.

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Subtitle C—Subsidiaries of National Banks

- Sec. 121. Permissible activities for subsidiaries of national banks.
- Sec. 122. Misrepresentations regarding depository institution liability for obligations of affiliates.
- Sec. 123. Repeal of stock loan limit in Federal reserve act.

Subtitle D—Wholesale Financial Holding Companies; Wholesale Financial Institutions

CHAPTER 1—WHOLESALE FINANCIAL HOLDING COMPANIES

- Sec. 131. Wholesale financial holding companies established.
- Sec. 132. Authorization to release reports.
- Sec. 133. Conforming amendments.

CHAPTER 2—WHOLESALE FINANCIAL INSTITUTIONS

- Sec. 136. Wholesale financial institutions.

Subtitle E—Streamlining Antitrust Review of Bank Acquisitions and Mergers

- Sec. 141. Amendments to the Bank Holding Company Act of 1956.
- Sec. 142. Amendments to the Federal Deposit Insurance Act to vest in the Attorney General sole responsibility for antitrust review of depository institution mergers.
- Sec. 143. Information filed by depository institutions; interagency data sharing.
- Sec. 144. Applicability of antitrust laws.
- Sec. 145. Clarification of status of subsidiaries and affiliates.
- Sec. 146. Effective date.

Subtitle F—Applying the Principles of National Treatment and Equality of Competitive Opportunity to Foreign Banks and Foreign Financial Institutions

- Sec. 151. Applying the principles of national treatment and equality of competitive opportunity to foreign banks that are financial holding companies.
- Sec. 152. Applying the principles of national treatment and equality of competitive opportunity to foreign banks and foreign financial institutions that are wholesale financial institutions.

Subtitle G—Federal Home Loan Bank System

- Sec. 161. Federal home loan banks
- Sec. 162. Membership and collateral.
- Sec. 163. The Office of Finance.
- Sec. 164. Management of banks.
- Sec. 165. Advances to nonmember borrowers.
- Sec. 166. Powers and duties of banks.
- Sec. 167. Mergers and consolidations of Federal home loan banks.
- Sec. 168. Technical amendments.
- Sec. 169. Definitions.
- Sec. 170. Resolution funding corporation
- Sec. 171. Capital structure of the Federal home loan banks.
- Sec. 172. Investments.
- Sec. 173. Federal Housing Finance Board.

Subtitle H—Direct Activities of Banks

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Sec. 181. Authority of national banks to underwrite certain municipal bonds

Subtitle I—Effective Date of Title

Sec. 191. Effective date.

TITLE II—FUNCTIONAL REGULATION**Subtitle A—Brokers and Dealers**

- Sec. 201. Definition of broker.
- Sec. 202. Definition of dealer.
- Sec. 203. Registration for sales of private securities offerings.
- Sec. 204. Sales practices and complaint procedures.
- Sec. 205. Information sharing.
- Sec. 206. Definition and treatment of banking products.
- Sec. 207. Derivative instrument and qualified investor defined.
- Sec. 208. Government securities defined.
- Sec. 209. Effective date.

Subtitle B—Bank Investment Company Activities

- Sec. 211. Custody of investment company assets by affiliated bank.
- Sec. 212. Lending to an affiliated investment company.
- Sec. 213. Independent directors.
- Sec. 214. Additional SEC disclosure authority.
- Sec. 215. Definition of broker under the Investment Company Act of 1940.
- Sec. 216. Definition of dealer under the Investment Company Act of 1940.
- Sec. 217. Removal of the exclusion from the definition of investment adviser for banks that advise investment companies.
- Sec. 218. Definition of broker under the Investment Advisers Act of 1940.
- Sec. 219. Definition of dealer under the Investment Advisers Act of 1940.
- Sec. 220. Interagency consultation.
- Sec. 221. Treatment of bank common trust funds.
- Sec. 222. Investment advisers prohibited from having controlling interest in registered investment company.
- Sec. 223. Conforming change in definition.
- Sec. 224. Conforming amendment.
- Sec. 225. Effective date.

Subtitle C—Securities and Exchange Commission Supervision of Investment Bank Holding Companies

- Sec. 231. Supervision of investment bank holding companies by the Securities and Exchange Commission.

Subtitle D—Study

- Sec. 241. Study of methods to inform investors and consumers of uninsured products.

TITLE III—INSURANCE**Subtitle A—State Regulation of Insurance**

- Sec. 301. State regulation of the business of insurance.
- Sec. 302. Mandatory insurance licensing requirements.
- Sec. 303. Functional regulation of insurance.

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- Sec. 304. Insurance underwriting in national banks.
- Sec. 305. New bank agency activities only through acquisition of existing licensed agents.
- Sec. 306. Title insurance activities of national banks and their affiliates.
- Sec. 307. Expedited and equalized dispute resolution for financial regulators.
- Sec. 308. Consumer protection regulations.
- Sec. 45. Consumer protection regulations.
- Sec. 309. Certain State affiliation laws preempted for insurance companies and affiliates.

Subtitle B—Redomestication of Mutual Insurers

- Sec. 311. General application.
- Sec. 312. Redomestication of mutual insurers.
- Sec. 313. Effect on State laws restricting redomestication.
- Sec. 314. Other provisions.
- Sec. 315. Definitions.
- Sec. 316. Effective date.

Subtitle C—National Association of Registered Agents and Brokers

- Sec. 321. State flexibility in multistate licensing reforms.
- Sec. 322. National Association of Registered Agents and Brokers.
- Sec. 323. Purpose.
- Sec. 324. Relationship to the Federal Government.
- Sec. 325. Membership.
- Sec. 326. Board of directors.
- Sec. 327. Officers.
- Sec. 328. Bylaws, rules, and disciplinary action.
- Sec. 329. Assessments.
- Sec. 330. Functions of the NAIC.
- Sec. 331. Liability of the Association and the directors, officers, and employees of the Association.
- Sec. 332. Elimination of NAIC oversight.
- Sec. 333. Relationship to State law.
- Sec. 334. Coordination with other regulators.
- Sec. 335. Judicial review.
- Sec. 336. Definitions.

TITLE IV—MERGER OF BANK AND THRIFT HOLDING COMPANIES
REGULATORS, AND BANK AND THRIFT INSURANCE FUNDS

- Sec. 401. Short title; definitions.

Subtitle A—Facilitating Conversion of Savings Associations to Banks

- Sec. 411. Branches of former savings associations.
- Sec. 412. Savings and loan holding companies.
- Sec. 413. Treatment of references in adjustable rate mortgages.
- Sec. 414. Cost of funds indexes.

Subtitle B—Ending Separate Federal Regulation of Savings Associations
Branching Rights and Savings and Loan Holding Companies

- Sec. 421. State savings associations treated as State banks under Federal banking law.
- Sec. 422. Amendments to the Home Owners' Loan Act.

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Sec. 423. Conforming amendment relating to merger of deposit insurance funds.

Sec. 424. Conforming amendments to the Federal Home Loan Bank Act.

Subtitle C—Combining OTS and OCC

Sec. 431. Prohibition of merger or consolidation repealed.

Sec. 432. Secretary of the Treasury required to formulate plans for combining Office of Thrift Supervision with Office of the Comptroller of the Currency.

Sec. 433. Office of Thrift Supervision and position of Director of the Office of Thrift Supervision abolished.

Sec. 434. Reconfiguration of board of directors of FDIC as a result of removal of Director of the Office of Thrift Supervision.

Sec. 435. Continuation provisions.

1 **TITLE I—FACILITATING AFFILI-**
2 **ATION AMONG SECURITIES**
3 **FIRMS, INSURANCE COMPA-**
4 **NIES, AND DEPOSITORY IN-**
5 **STITUTIONS**

6 **Subtitle A—Affiliations**

7 **SEC. 101. GLASS-STEAGALL ACT REFORMED.**

8 (a) SECTION 20 REPEALED.—Section 20 (12 U.S.C.
9 377) of the Banking Act of 1933 (commonly referred to
10 as the “Glass-Steagall Act”) is repealed.

11 (b) SECTION 32 REPEALED.—Section 32 (12 U.S.C.
12 78) of the Banking Act of 1933 is repealed.

13 **SEC. 102. ACTIVITY RESTRICTIONS APPLICABLE TO BANK**
14 **HOLDING COMPANIES WHICH ARE NOT FI-**
15 **NANCIAL HOLDING COMPANIES.**

16 (a) IN GENERAL.—Section 4(c)(8) of the Bank Hold-
17 ing Company Act of 1956 (12 U.S.C. 1843(c)(8)) is
18 amended to read as follows:

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1 “(8) shares of any company the activities of
2 which had been determined by the Board by regula-
3 tion under this paragraph as of the day before the
4 date of the enactment of the Financial Services Act
5 of 1998, to be so closely related to banking as to be
6 a proper incident thereto (subject to such terms and
7 conditions contained in such regulation, unless modi-
8 fied by the Board);”.

9 (b) CONFORMING CHANGES TO OTHER STATUTES.—

10 (1) AMENDMENT TO THE BANK HOLDING COM-
11 PANY ACT AMENDMENTS OF 1970.—Section 105 of
12 the Bank Holding Company Act Amendments of
13 1970 (12 U.S.C. 1850) is amended by striking “, to
14 engage directly or indirectly in a nonbanking activity
15 pursuant to section 4 of such Act,”.

16 (2) AMENDMENT TO THE BANK SERVICE COM-
17 PANY ACT.—Section 4(f) of the Bank Service Com-
18 pany Act (12 U.S.C. 1864(f)) is amended by strik-
19 ing the period and adding at the end the following:
20 “as of the day before the date of enactment of the
21 Financial Services Act of 1998.”.

22 **SEC. 103. FINANCIAL HOLDING COMPANIES.**

23 (a) IN GENERAL.—The Bank Holding Company Act
24 of 1956 is amended by inserting after section 5 (12 U.S.C.
25 1844) the following new section:

1 **“SEC. 6. FINANCIAL HOLDING COMPANIES.**

2 “(a) FINANCIAL HOLDING COMPANY DEFINED.—

3 For purposes of this section, the term ‘financial holding
4 company’ means a bank holding company which meets the
5 requirements of subsection (b).

6 “(b) ELIGIBILITY REQUIREMENTS FOR FINANCIAL
7 HOLDING COMPANIES.—

8 “(1) IN GENERAL.—No bank holding company
9 may engage in any activity or directly or indirectly
10 acquire or retain shares of any company under this
11 section unless the bank holding company meets the
12 following requirements:

13 “(A) All of the subsidiary depository insti-
14 tutions of the bank holding company are well
15 capitalized.

16 “(B) All of the subsidiary depository insti-
17 tutions of the bank holding company are well
18 managed.

19 “(C) All of the subsidiary depository insti-
20 tutions of the bank holding company have
21 achieved a rating of ‘satisfactory record of
22 meeting community credit needs’, or better, at
23 the most recent examination of each such insti-
24 tution under the Community Reinvestment Act
25 of 1977.

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1 “(D) All of the subsidiary insured deposi-
2 tory institutions of the bank holding company
3 (other than any such depository institution
4 which does not, in the ordinary course of the
5 business of the depository institution, offer
6 consumer transaction accounts to the general
7 public) offer and maintain low-cost basic bank-
8 ing accounts.

9 “(E) The company has filed with the
10 Board a declaration that the company elects to
11 be a financial holding company and certifying
12 that the company meets the requirements of
13 subparagraphs (A) through (D).

14 “(2) FOREIGN BANKS AND COMPANIES.—For
15 purposes of paragraph (1), the Board shall establish
16 and apply comparable capital standards to a foreign
17 bank that operates a branch or agency or owns or
18 controls a bank or commercial lending company in
19 the United States, and any company that owns or
20 controls such foreign bank, giving due regard to the
21 principle of national treatment and equality of com-
22 petitive opportunity.

23 “(3) LIMITED EXCLUSIONS FROM COMMUNITY
24 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DE-
25 POSITORY INSTITUTIONS.—

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1 “(A) IN GENERAL.—If the requirements of
2 subparagraph (B) are met, any depository insti-
3 tution acquired by a bank holding company
4 during the 24-month period preceding the sub-
5 mission of a declaration under paragraph
6 (1)(E) and any depository institution acquired
7 after the submission of such declaration may be
8 excluded for purposes of paragraph (1)(C) until
9 the later of—

10 “(i) the end of the 24-month period
11 beginning on the date the acquisition of
12 the depository institution by such company
13 is consummated; or

14 “(ii) the date of completion of the 1st
15 examination of such depository institution
16 under the Community Reinvestment Act of
17 1977 which is conducted after the date of
18 the acquisition of the depository institu-
19 tion.

20 “(B) REQUIREMENTS.—The requirements
21 of this subparagraph are met with respect to
22 any bank holding company referred to in sub-
23 paragraph (A) if—

24 “(i) the bank holding company has
25 submitted an affirmative plan to the ap-

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1 appropriate Federal banking agency to take
2 such action as may be necessary in order
3 for such institution to achieve a rating of
4 ‘satisfactory record of meeting community
5 credit needs’, or better, at the next exam-
6 ination of the institution under the Com-
7 munity Reinvestment Act of 1977; and

8 “(ii) the plan has been approved by
9 such agency.

10 “(c) ENGAGING IN ACTIVITIES FINANCIAL IN NA-
11 TURE.—

12 “(1) IN GENERAL.—Notwithstanding section
13 4(a), a financial holding company and a wholesale fi-
14 nancial holding company may engage in any activity,
15 and acquire and retain the shares of any company
16 engaged in any activity, which the Board has deter-
17 mined (by regulation or order) to be financial in na-
18 ture or incidental to such financial activities.

19 “(2) FACTORS TO BE CONSIDERED.—In deter-
20 mining whether an activity is financial in nature or
21 incidental to financial activities, the Board shall take
22 into account—

23 “(A) the purposes of this Act and the Fi-
24 nancial Services Act of 1998;

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1 “(B) changes or reasonably expected
2 changes in the marketplace in which bank hold-
3 ing companies compete;

4 “(C) changes or reasonably expected
5 changes in the technology for delivering finan-
6 cial services; and

7 “(D) whether such activity is necessary or
8 appropriate to allow a bank holding company
9 and the affiliates of a bank holding company
10 to—

11 “(i) compete effectively with any com-
12 pany seeking to provide financial services
13 in the United States;

14 “(ii) use any available or emerging
15 technological means, including any applica-
16 tion necessary to protect the security or ef-
17 ficacy of systems for the transmission of
18 data or financial transactions, in providing
19 financial services; and

20 “(iii) offer customers any available or
21 emerging technological means for using fi-
22 nancial services.

23 “(3) ACTIVITIES THAT ARE FINANCIAL IN NA-
24 TURE.—The following activities shall be considered
25 to be financial in nature:

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1 “(A) Lending, exchanging, transferring, in-
2 vesting for others, or safeguarding money or se-
3 curities.

4 “(B) Insuring, guaranteeing, or indemnify-
5 ing against loss, harm, damage, illness, disabil-
6 ity, or death, or providing and issuing annu-
7 ities, and acting as principal, agent, or broker
8 for purposes of the foregoing.

9 “(C) Providing financial, investment, or
10 economic advisory services, including advising
11 an investment company (as defined in section 3
12 of the Investment Company Act of 1940).

13 “(D) Issuing or selling instruments rep-
14 resenting interests in pools of assets permissible
15 for a bank to hold directly.

16 “(E) Underwriting, dealing in, or making
17 a market in securities.

18 “(F) Engaging in any activity that the
19 Board has determined, by order or regulation
20 that is in effect on the date of enactment of the
21 Financial Services Act of 1998, to be so closely
22 related to banking or managing or controlling
23 banks as to be a proper incident thereto (sub-
24 ject to the same terms and conditions contained

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1 in such order or regulation, unless modified by
2 the Board).

3 “(G) Engaging, in the United States, in
4 any activity that—

5 “(i) a bank holding company may en-
6 gage in outside the United States; and

7 “(ii) the Board has determined, under
8 regulations issued pursuant to section
9 4(c)(13) of this Act (as in effect on the
10 day before the date of enactment of the Fi-
11 nancial Services Act of 1998) to be usual
12 in connection with the transaction of bank-
13 ing or other financial operations abroad.

14 “(H) Directly or indirectly acquiring or
15 controlling, whether as principal, on behalf of 1
16 or more entities (including entities, other than
17 a depository institution or subsidiary of a de-
18 pository institution, that the bank holding com-
19 pany controls) or otherwise, shares, assets, or
20 ownership interests (including without limita-
21 tion debt or equity securities, partnership inter-
22 ests, trust certificates or other instruments rep-
23 resenting ownership) of a company or other en-
24 tity, whether or not constituting control of such

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1 company or entity, engaged in any activity not
2 authorized pursuant to this section if—

3 “(i) the shares, assets, or ownership
4 interests are not acquired or held by a de-
5 pository institution or subsidiary of a de-
6 pository institution;

7 “(ii) such shares, assets, or ownership
8 interests are acquired and held by a securi-
9 ties affiliate or an affiliate thereof as part
10 of a bona fide underwriting or merchant
11 banking activity, including investment ac-
12 tivities engaged in for the purpose of ap-
13 preciation and ultimate resale or disposi-
14 tion of the investment;

15 “(iii) such shares, assets, or owner-
16 ship interests, are held only for such a pe-
17 riod of time as will permit the sale or dis-
18 position thereof on a reasonable basis con-
19 sistent with the nature of the activities de-
20 scribed in clause (ii); and

21 “(iv) during the period such shares,
22 assets, or ownership interests are held, the
23 bank holding company does not actively
24 participate in the day to day management
25 or operation of such company or entity, ex-

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1 cept insofar as necessary to achieve the ob-
2 jectives of clause (ii).

3 “(I) Directly or indirectly acquiring or con-
4 trolling, whether as principal, on behalf of 1 or
5 more entities (including entities, other than a
6 depository institution or subsidiary of a depository
7 institution, that the bank holding company
8 controls) or otherwise, shares, assets, or owner-
9 ship interests (including without limitation debt
10 or equity securities, partnership interests, trust
11 certificates or other instruments representing
12 ownership) of a company or other entity, wheth-
13 er or not constituting control of such company
14 or entity, engaged in any activity not authorized
15 pursuant to this section if—

16 “(i) the shares, assets, or ownership
17 interests are not acquired or held by a de-
18 pository institution or a subsidiary of a de-
19 pository institution;

20 “(ii) such shares, assets, or ownership
21 interests are acquired and held by an in-
22 surance company that is predominantly en-
23 gaged in underwriting life, accident and
24 health, or property and casualty insurance
25 (other than credit-related insurance);

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1 “(iii) such shares, assets, or owner-
2 ship interests represent an investment
3 made in the ordinary course of business of
4 such insurance company in accordance
5 with relevant State law governing such in-
6 vestments; and

7 “(iv) during the period such shares,
8 assets, or ownership interests are held, the
9 bank holding company does not directly or
10 indirectly participate in the day-to-day
11 management or operation of the company
12 or entity except insofar as necessary to
13 achieve the objectives of clauses (ii) and
14 (iii).

15 “(4) ACTIONS REQUIRED.—The Board shall, by
16 regulation or order, define, consistent with the pur-
17 poses of this Act, the following activities as, and the
18 extent to which such activities are, financial in na-
19 ture or incidental to activities which are financial in
20 nature:

21 “(A) Lending, exchanging, transferring, in-
22 vesting for others, or safeguarding financial as-
23 sets other than money or securities.

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1 “(B) Providing any device or other instru-
2 mentality for transferring money or other finan-
3 cial assets;

4 “(C) Arranging, effecting, or facilitating fi-
5 nancial transactions for the account of third
6 parties.

7 “(5) POST CONSUMMATION NOTIFICATION.—

8 “(A) IN GENERAL.—A financial holding
9 company and a wholesale financial holding com-
10 pany that acquires any company, or commences
11 any activity, pursuant to this subsection shall
12 provide written notice to the Board describing
13 the activity commenced or conducted by the
14 company acquired no later than 30 calendar
15 days after commencing the activity or con-
16 summing the acquisition.

17 “(B) APPROVAL NOT REQUIRED FOR CER-
18 TAIN FINANCIAL ACTIVITIES.—Except as pro-
19 vided in section 4(j) with regard to the acqui-
20 sition of a savings association, a financial holding
21 company and a wholesale financial holding com-
22 pany may commence any activity, or acquire
23 any company, pursuant to paragraph (3) or any
24 regulation prescribed or order issued under

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1 paragraph (4), without prior approval of the
2 Board.

3 “(d) PROVISIONS APPLICABLE TO FINANCIAL HOLD-
4 ING COMPANIES THAT FAIL TO MEET REQUIREMENTS.—

5 “(1) IN GENERAL.—If the Board finds that a
6 financial holding company is not in compliance with
7 the requirements of subparagraph (A), (B), or (C)
8 of subsection (b)(1), the Board shall give notice of
9 such finding to the company.

10 “(2) AGREEMENT TO CORRECT CONDITIONS RE-
11 QUIRED.—Within 45 days of receipt by a financial
12 holding company of a notice given under paragraph
13 (1) (or such additional period as the Board may per-
14 mit), the company shall execute an agreement ac-
15 ceptable to the Board to comply with the require-
16 ments applicable to a financial holding company.

17 “(3) BOARD MAY IMPOSE LIMITATIONS.—Until
18 the conditions described in a notice to a financial
19 holding company under paragraph (1) are corrected,
20 the Board may impose such limitations on the con-
21 duct or activities of the company or any affiliate of
22 the company as the Board determines to be appro-
23 priate under the circumstances.

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1 “(4) FAILURE TO CORRECT.—If, after receiving
2 a notice under paragraph (1), a financial holding
3 company does not—

4 “(A) execute and implement an agreement
5 in accordance with paragraph (2);

6 “(B) comply with any limitations imposed
7 under paragraph (3);

8 “(C) in the case of a notice of failure to
9 comply with subsection (b)(1)(A), restore each
10 depository institution subsidiary to well capital-
11 ized status before the end of the 180-day period
12 beginning on the date such notice is received by
13 the company (or such other period permitted by
14 the Board); or

15 “(D) in the case of a notice of failure to
16 comply with subparagraph (B) or (C) of sub-
17 section (b)(1), restore compliance with any such
18 subparagraph by the date the next examination
19 of the depository institution subsidiary is com-
20 pleted or by the end of such other period as the
21 Board determines to be appropriate,

22 the Board may require such company, under such
23 terms and conditions as may be imposed by the
24 Board and subject to such extension of time as may
25 be granted in the Board’s discretion, to divest con-

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1 trol of any depository institution subsidiary or, at
2 the election of the financial holding company, in-
3 stead to cease to engage in any activity conducted by
4 such company or its subsidiaries pursuant to this
5 section.

6 “(5) CONSULTATION.—In taking any action
7 under this subsection, the Board shall consult with
8 all relevant Federal and State regulatory agencies.

9 “(e) SAFEGUARDS FOR BANK SUBSIDIARIES.—A fi-
10 nancial holding company shall assure that—

11 “(1) the procedures of the holding company for
12 identifying and managing financial and operational
13 risks within the company, and the subsidiaries of
14 such company, adequately protect the subsidiaries of
15 such company which are insured depository institu-
16 tions from such risks;

17 “(2) the holding company has reasonable poli-
18 cies and procedures to preserve the separate cor-
19 porate identity and limited liability of such company
20 and the subsidiaries of such company, for the pro-
21 tection of the company’s subsidiary insured deposi-
22 tory institutions; and

23 “(3) the holding company complies with this
24 section.

25 “(f) NONFINANCIAL ACTIVITIES.—

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1 “(1) IN GENERAL.—Notwithstanding section
2 4(a), a financial holding company may engage in ac-
3 tivities which are not (or have not been determined
4 to be) financial in nature or incidental to activities
5 which are financial in nature, or acquire and retain
6 ownership and control of the shares of a company
7 engaged in such activities, if—

8 “(A) the aggregate annual gross revenues
9 derived from all such activities and all such
10 companies does not exceed the lesser of—

11 “(i) 5 percent of the consolidated an-
12 nual gross revenues of the financial hold-
13 ing company; or

14 “(ii) \$500,000,000;

15 “(B) the consolidated total assets of any
16 company the shares of which are acquired by
17 the financial holding company pursuant to this
18 paragraph are less than \$750,000,000 at the
19 time the shares are acquired by the holding
20 company; and

21 “(C) the holding company provides notice
22 to the Board within 30 days of commencing the
23 activity or acquiring the ownership or control.

24 “(2) INCLUSION OF GRANDFATHERED ACTIVI-
25 TIES.—For purposes of determining the limits con-

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1 tained in paragraph (1)(A), the gross revenues de-
2 rived from all activities conducted, and companies
3 the shares of which are held, under subsection (g)
4 shall be considered to be derived or held under this
5 subsection.

6 “(3) FOREIGN BANKS.—In lieu of the limitation
7 contained in paragraph (1)(A) in the case of a for-
8 eign bank or a company that owns or controls a for-
9 eign bank which engages in any activity or acquires
10 or retains ownership or control of shares of any
11 company pursuant to paragraph (1), the aggregate
12 annual gross revenues derived from all such activi-
13 ties and all such companies in the United States
14 shall not exceed the lesser of—

15 “(A) 5 percent of the consolidated annual
16 gross revenues of the foreign bank or company
17 in the United States derived from any branch,
18 agency, commercial lending company, or deposi-
19 tory institution controlled by the foreign bank
20 or company and any subsidiary engaged in the
21 United States in activities permissible under
22 section 4 or 6; or

23 “(B) \$500,000,000.

24 “(4) INDEXING REVENUE TEST.—After Decem-
25 ber 31, 1998, the Board shall annually adjust the

1 dollar amount contained in paragraphs (1)(A) and
2 (3) by the annual percentage increase in the
3 Consumer Price Index for Urban Wage Earners and
4 Clerical Workers published by the Bureau of Labor
5 Statistics.

6 “(5) NONAPPLICABILITY OF OTHER EXEMP-
7 TION.—Any foreign bank or company that owns or
8 controls a foreign bank which engages in any activ-
9 ity or acquires or retains ownership or control of
10 shares of any company pursuant to this subsection
11 shall not be eligible for any exception described in
12 section 2(h).

13 “(g) AUTHORITY TO RETAIN LIMITED NON-
14 FINANCIAL ACTIVITIES AND AFFILIATIONS.—

15 “(1) IN GENERAL.—Notwithstanding subsection
16 (f)(1) and section 4(a), a company that is not a
17 bank holding company or a foreign bank (as defined
18 in section 1(b)(7) of the International Banking Act
19 of 1978) and becomes a financial holding company
20 after the date of the enactment of the Financial
21 Services Act of 1998 may continue to engage in any
22 activity and retain direct or indirect ownership or
23 control of shares of a company engaged in any activ-
24 ity if—

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1 “(A) the holding company lawfully was en-
2 gaged in the activity or held the shares of such
3 company on September 30, 1997;

4 “(B) the holding company is predomi-
5 nantly engaged in financial activities as defined
6 in paragraph (2); and

7 “(C) the company engaged in such activity
8 continues to engage only in the same activities
9 that such company conducted on September 30,
10 1997, and other activities permissible under
11 this Act.

12 “(2) PREDOMINANTLY FINANCIAL.—For pur-
13 poses of this subsection, a company is predominantly
14 engaged in financial activities if, as of the day before
15 the company becomes a financial holding company,
16 the annual gross revenues derived by the holding
17 company and all subsidiaries of the holding com-
18 pany, on a consolidated basis, from engaging in ac-
19 tivities that are financial in nature or are incidental
20 to activities that are financial in nature under sub-
21 section (c) represent at least 85 percent of the con-
22 solidated annual gross revenues of the company.

23 “(3) NO EXPANSION OF GRANDFATHERED COM-
24 MERCIAL ACTIVITIES THROUGH MERGER OR CON-
25 SOLIDATION.—A financial holding company that en-

1 gages in activities or holds shares pursuant to this
2 subsection, or a subsidiary of such financial holding
3 company, may not acquire, in any merger, consolida-
4 tion, or other type of business combination, assets of
5 any other company which is engaged in any activity
6 which the Board has not determined to be financial
7 in nature or incidental to activities that are financial
8 in nature under subsection (c).

9 “(4) CONTINUING REVENUE LIMITATION ON
10 GRANDFATHERED COMMERCIAL ACTIVITIES.—Not-
11 withstanding any other provision of this subsection,
12 a financial holding company may continue to engage
13 in activities or hold shares in companies pursuant to
14 this subsection only to the extent that the aggregate
15 annual gross revenues derived from all such activi-
16 ties and all such companies does not exceed 15 per-
17 cent of the consolidated annual gross revenues of the
18 financial holding company.

19 “(5) CROSS MARKETING RESTRICTIONS APPLI-
20 CABLE TO COMMERCIAL ACTIVITIES.—A depository
21 institution controlled by a financial holding company
22 shall not—

23 “(A) offer or market, directly or through
24 any arrangement, any product or service of a
25 company whose activities are conducted or

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1 whose shares are owned or controlled by the fi-
2 nancial holding company pursuant to this sub-
3 section, subsection (f), or subparagraph (H) or
4 (I) of subsection (c)(3); or

5 “(B) permit any of its products or services
6 to be offered or marketed, directly or through
7 any arrangement, by or through any company
8 described in subparagraph (A).

9 “(6) TRANSACTIONS WITH NONFINANCIAL AF-
10 FILIATES.—An insured depository institution con-
11 trolled by a financial holding company may not en-
12 gage in a covered transaction (as defined by section
13 23A(b)(7) of the Federal Reserve Act) with any af-
14 filiate controlled by the company pursuant to this
15 subsection, subsection (f), or subparagraph (H) or
16 (I) of subsection (c)(3).

17 “(h) DEVELOPING ACTIVITIES.—A financial holding
18 company and a wholesale financial holding company may
19 engage directly or indirectly, or acquire shares of any com-
20 pany engaged, in any activity that the Board has not de-
21 termined to be financial in nature or incidental to financial
22 activities under subsection (c) if—

23 “(1) the holding company reasonably concludes
24 that the activity is financial in nature or incidental
25 to financial activities;

1 “(2) the gross revenues from all activities con-
2 ducted under this subsection represent less than 5
3 percent of the consolidated gross revenues of the
4 holding company;

5 “(3) the aggregate total assets of all companies
6 the shares of which are held under this subsection
7 do not exceed 5 percent of the holding company’s
8 consolidated total assets;

9 “(4) the total capital invested in activities con-
10 ducted under this subsection represents less than 5
11 percent of the consolidated total capital of the hold-
12 ing company;

13 “(5) the Board has not determined that the ac-
14 tivity is not financial in nature or incidental to fi-
15 nancial activities under subsection (c); and

16 “(6) the holding company provides written noti-
17 fication to the Board describing the activity com-
18 menced or conducted by the company acquired no
19 later than 10 business days after commencing the
20 activity or consummating the acquisition.”.

21 **SEC. 104. CERTAIN STATE LAWS PREEMPTED.**

22 (a) AFFILIATIONS.—No State may by statute, regula-
23 tion, order, interpretation, or otherwise, prevent or restrict
24 an insured depository institution or a wholesale financial
25 institution from being affiliated with an entity (including

1 an entity engaged in insurance activities) as authorized
2 by this Act or any other provision of Federal law.

3 (b) ACTIVITIES.

4 (1) Except as provided in paragraphs (2) and
5 (3) and subject to section 18(c) of the Securities Act
6 of 1933, no State may by statute, regulation, order,
7 interpretation, or otherwise, prevent or restrict an
8 insured depository institution or a wholesale finan-
9 cial institution from engaging, directly or indirectly
10 or in conjunction with an affiliate, in any activity
11 authorized under this Act or any other provision of
12 Federal law.

13 (2) As stated by the United States Supreme
14 Court in *Barnett Bank of Marion County, N.A. v.*
15 *Nelson*, 116 S.Ct. 1103 (1996), no State may, by
16 statute, regulation, order, interpretation, or other-
17 wise, prevent or significantly interfere with the abil-
18 ity of an insured depository institution or wholesale
19 financial institution to engage, directly or indirectly,
20 or in conjunction with an affiliate, in any insurance
21 sales or solicitation activity, except that—

22 (A) State statutes and regulations govern-
23 ing insurance sales and solicitations which are
24 no more restrictive than provisions in the Illi-
25 nois “Act Authorizing and Regulating the Sale

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1 of Insurance by Financial Institutions, Public
2 Act 90-41” (215 ILCS 5/1400-1416), as in ef-
3 fect on October 1, 1997, shall not be deemed to
4 prevent or significantly interfere with the ability
5 of an insured depository institution or wholesale
6 financial institution to engage, directly or indi-
7 rectly, or in conjunction with an affiliate, in any
8 insurance sales or solicitation activity; and

9 (B) subparagraph (A) shall not create any
10 inference regarding State statutes, and regula-
11 tions governing insurance sales and solicitations
12 which are more restrictive than any provision in
13 the Illinois “Act Authorizing and Regulating
14 the Sale of Insurance by Financial Institu-
15 tions”, (Public Act 90-41; 215 ILCS 5/1400-
16 1416), as in effect on October 1, 1997.

17 (3) State statutes, regulations, orders, and in-
18 terpretations which are applicable to and are applied
19 in the same manner with respect to insurance under-
20 writing activities of an affiliate of an insured deposi-
21 tory institution or a wholesale financial institution
22 as they are applicable to and are applied to an in-
23 surance underwriter which is not affiliated with an
24 insured depository institution or a wholesale finan-

1 cial institution shall not be preempted under para-
2 graph (1).

3 **SEC. 105. MUTUAL BANK HOLDING COMPANIES AUTHOR-**
4 **IZED.**

5 (a) IN GENERAL.—Section 3(g)(2) of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C. 1842(g)(2)) is
7 amended to read as follows:

8 “(2) REGULATIONS.—A bank holding company
9 organized as a mutual holding company shall be reg-
10 ulated on terms, and shall be subject to limitations,
11 comparable to those applicable to any other bank
12 holding company.”.

13 **SEC. 106. PROHIBITION ON DEPOSIT PRODUCTION OF-**
14 **FICES.**

15 (a) IN GENERAL.—Section 109(d) of the Riegle-Neal
16 Interstate Banking and Branching Efficiency Act of 1994
17 (12 U.S.C. 1835a(d)) is amended—

18 (1) by inserting “, the Financial Services Act of
19 1998,” after “pursuant to this title”; and

20 (2) by inserting “or such Act” after “made by
21 this title”.

22 (b) TECHNICAL AND CONFORMING AMENDMENT.—
23 Section 109(e)(4) of the Riegle-Neal Interstate Banking
24 and Branching Efficiency Act of 1994 (12 U.S.C.
25 1835a(e)(4)) is amended by inserting “and any branch of

1 a bank controlled by an out-of-State bank holding com-
2 pany (as defined in section 2(o)(7) of the Bank Holding
3 Company Act of 1956)” before the period.

4 **SEC. 107. CLARIFICATION OF BRANCH CLOSURE REQUIRE-**
5 **MENTS.**

6 Section 42(d)(4)(A) of the Federal Deposit Insurance
7 Act (12 U.S.C. 1831r-1(d)(4)(A)) is amended by inserting
8 “and any bank controlled by an out-of-State bank holding
9 company (as defined in section 2(o)(7) of the Bank Hold-
10 ing Company Act of 1956)” before the period.

11 **SEC. 108. AMENDMENTS RELATING TO LIMITED PURPOSE**
12 **BANKS.**

13 Section 4(f) of the Bank Holding Company Act of
14 1956 (12 U.S.C. 1843(f)) is amended—

15 (1) in paragraph (2)(A)(ii)—

16 (A) by striking “and” at the end of sub-
17 clause (IX);

18 (B) by inserting “and” after the semicolon
19 at the end of subclause (X); and

20 (C) by inserting after subclause (X) the
21 following new subclause:

22 “(XI) assets that are derived
23 from, or are incidental to, activities in
24 which institutions described in section
25 2(c)(2)(F) are permitted to engage,”;

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1 (2) in paragraph (2), by striking subparagraph
2 (B) and inserting the following new subparagraphs:

3 “(B) any bank subsidiary of such company
4 engages in any activity in which the bank was
5 not lawfully engaged as of March 5, 1987, un-
6 less the bank is well managed and well capital-
7 ized;

8 “(C) any bank subsidiary of such company
9 both—

10 “(i) accepts demand deposits or de-
11 posits that the depositor may withdraw by
12 check or similar means for payment to
13 third parties; and

14 “(ii) engages in the business of mak-
15 ing commercial loans (and, for purposes of
16 this clause, loans made in the ordinary
17 course of a credit card operation shall not
18 be treated as commercial loans); or

19 “(D) after the date of the enactment of the
20 Competitive Equality Amendments of 1987, any
21 bank subsidiary of such company permits any
22 overdraft (including any intraday overdraft), or
23 incurs any such overdraft in such bank’s ac-
24 count at a Federal reserve bank, on behalf of

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1 an affiliate, other than an overdraft described
2 in paragraph (3).”; and

3 (3) by striking paragraphs (3) and (4) and in-
4 serting the following new paragraphs:

5 “(3) PERMISSIBLE OVERDRAFTS DESCRIBED.—
6 For purposes of paragraph (2)(D), an overdraft is
7 described in this paragraph if—

8 “(A) such overdraft results from an inad-
9 vertent computer or accounting error that is be-
10 yond the control of both the bank and the affili-
11 ate; or

12 “(B) such overdraft—

13 “(i) is permitted or incurred on behalf
14 of an affiliate which is monitored by, re-
15 ports to, and is recognized as a primary
16 dealer by the Federal Reserve Bank of
17 New York; and

18 “(ii) is fully secured, as required by
19 the Board, by bonds, notes, or other obli-
20 gations which are direct obligations of the
21 United States or on which the principal
22 and interest are fully guaranteed by the
23 United States or by securities and obliga-
24 tions eligible for settlement on the Federal
25 Reserve book entry system.

1 “(4) DIVESTITURE IN CASE OF LOSS OF EX-
2 EMPTION.—If any company described in paragraph
3 (1) fails to qualify for the exemption provided under
4 such paragraph by operation of paragraph (2), such
5 exemption shall cease to apply to such company and
6 such company shall divest control of each bank it
7 controls before the end of the 180-day period begin-
8 ning on the date that the company receives notice
9 from the Board that the company has failed to con-
10 tinue to qualify for such exemption, unless before
11 the end of such 180-day period, the company has—

12 “(A) corrected the condition or ceased the
13 activity that caused the company to fail to con-
14 tinue to qualify for the exemption; and

15 “(B) implemented procedures that are rea-
16 sonably adapted to avoid the reoccurrence of
17 such condition or activity.”.

18 **Subtitle B—Streamlining Super-**
19 **vision of Financial Holding**
20 **Companies**

21 **SEC. 111. STREAMLINING FINANCIAL HOLDING COMPANY**
22 **SUPERVISION.**

23 Section 5(c) of the Bank Holding Company Act of
24 1956 (12 U.S.C. 1844(c)) is amended to read as follows:

25 “(c) REPORTS AND EXAMINATIONS.—

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1 “(1) REPORTS.—

2 “(A) IN GENERAL.—The Board from time
3 to time may require any bank holding company
4 and any subsidiary of such company to submit
5 reports under oath to keep the Board informed
6 as to—

7 “(i) its financial condition, systems
8 for monitoring and controlling financial
9 and operating risks, and transactions with
10 depository institution subsidiaries of the
11 holding company; and

12 “(ii) compliance by the company or
13 subsidiary with applicable provisions of
14 this Act.

15 “(B) USE OF EXISTING REPORTS.—

16 “(i) IN GENERAL.—The Board shall,
17 to the fullest extent possible, accept re-
18 ports in fulfillment of the Board’s report-
19 ing requirements under this paragraph
20 that a bank holding company or any sub-
21 sidiary of such company has provided or
22 been required to provide to other Federal
23 and State supervisors or to appropriate
24 self-regulatory organizations.

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1 “(ii) AVAILABILITY.—A bank holding
2 company or a subsidiary of such company
3 shall provide to the Board, at the request
4 of the Board, a report referred to in clause
5 (i).

6 “(iii) REQUIRED USE OF PUBLICLY
7 REPORTED INFORMATION.—The Board
8 shall, to the fullest extent possible, accept
9 in fulfillment of any reporting or record-
10 keeping requirements under this Act infor-
11 mation that is otherwise required to be re-
12 ported publicly and externally audited fi-
13 nancial statements.

14 “(iv) REPORTS FILED WITH OTHER
15 AGENCIES.—In the event the Board re-
16 quires a report from a functionally regu-
17 lated nondepository institution subsidiary
18 of a bank holding company of a kind that
19 is not required by another Federal or State
20 regulator or appropriate self-regulatory or-
21 ganization, the Board shall request that
22 the appropriate regulator or self-regulatory
23 organization obtain such report. If the re-
24 port is not made available to the Board,
25 and the report is necessary to assess a ma-

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1 terial risk to the bank holding company or
2 its subsidiary depository institution or
3 compliance with this Act, the Board may
4 require such subsidiary to provide such a
5 report to the Board.

6 “(C) DEFINITION.—For purposes of this
7 subsection, the term ‘functionally regulated
8 nondepository institution’ means—

9 “(i) a broker or dealer registered
10 under the Securities Exchange Act of
11 1934;

12 “(ii) an investment adviser registered
13 under the Investment Advisers Act of
14 1940, with respect to the investment advi-
15 sory activities of such investment adviser
16 and activities incidental to such investment
17 advisory activities;

18 “(iii) an insurance company subject to
19 supervision by a State insurance commis-
20 sion, agency, or similar authority; and

21 “(iv) an entity subject to regulation
22 by the Commodity Futures Trading Com-
23 mission, with respect to the commodities
24 activities of such entity and activities inci-
25 dental to such commodities activities.

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1 “(2) EXAMINATIONS.—

2 “(A) EXAMINATION AUTHORITY.—

3 “(i) IN GENERAL.—The Board may
4 make examinations of each bank holding
5 company and each subsidiary of a bank
6 holding company.

7 “(ii) FUNCTIONALLY REGULATED
8 NONDEPOSITORY INSTITUTION SUBSIDI-
9 ARIES.—Notwithstanding clause (i), the
10 Board may make examinations of a func-
11 tionally regulated nondepository institution
12 subsidiary of a bank holding company only
13 if—

14 “(I) the Board has reasonable
15 cause to believe that such subsidiary
16 is engaged in activities that pose a
17 material risk to an affiliated deposi-
18 tory institution, or

19 “(II) based on reports and other
20 available information, the Board has
21 reasonable cause to believe that a sub-
22 sidiary is not in compliance with this
23 Act or with provisions relating to
24 transactions with an affiliated deposi-
25 tory institution and the Board cannot

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1 make such determination through ex-
2 amination of the affiliated depository
3 institution or bank holding company.

4 “(B) LIMITATIONS ON EXAMINATION AU-
5 THORITY FOR BANK HOLDING COMPANIES AND
6 SUBSIDIARIES.—Subject to subparagraph
7 (A)(ii), the Board may make examinations
8 under subparagraph (A)(i) of each bank holding
9 company and each subsidiary of such holding
10 company in order to—

11 “(i) inform the Board of the nature of
12 the operations and financial condition of
13 the holding company and such subsidiaries;

14 “(ii) inform the Board of—

15 “(I) the financial and operational
16 risks within the holding company sys-
17 tem that may pose a threat to the
18 safety and soundness of any subsidi-
19 ary depository institution of such
20 holding company; and

21 “(II) the systems for monitoring
22 and controlling such risks; and

23 “(iii) monitor compliance with the
24 provisions of this Act and those governing
25 transactions and relationships between any

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1 subsidiary depository institution and its af-
2 filiates.

3 “(C) RESTRICTED FOCUS OF EXAMINA-
4 TIONS.—The Board shall, to the fullest extent
5 possible, limit the focus and scope of any exam-
6 ination of a bank holding company to—

7 “(i) the bank holding company; and

8 “(ii) any subsidiary of the holding
9 company that, because of—

10 “(I) the size, condition, or activi-
11 ties of the subsidiary;

12 “(II) the nature or size of trans-
13 actions between such subsidiary and
14 any depository institution which is
15 also a subsidiary of such holding com-
16 pany; or

17 “(III) the centralization of func-
18 tions within the holding company sys-
19 tem,

20 could have a materially adverse effect on
21 the safety and soundness of any depository
22 institution affiliate of the holding company.

23 “(D) DEFERENCE TO BANK EXAMINA-
24 TIONS.—The Board shall, to the fullest extent
25 possible, use, for the purposes of this para-

1 graph, the reports of examinations of depository
2 institutions made by the appropriate Federal
3 and State depository institution supervisory au-
4 thority.

5 “(E) DEFERENCE TO OTHER EXAMINA-
6 TIONS.—The Board shall, to the fullest extent
7 possible, address the circumstances which might
8 otherwise permit or require an examination by
9 the Board by forgoing an examination and in-
10 stead reviewing the reports of examination
11 made of—

12 “(i) any registered broker or dealer or
13 registered investment adviser by or on be-
14 half of the Securities and Exchange Com-
15 mission;

16 “(ii) any licensed insurance company
17 by or on behalf of any state regulatory au-
18 thority responsible for the supervision of
19 insurance companies; and

20 “(iii) any other subsidiary that the
21 Board finds to be comprehensively super-
22 vised by a Federal or State authority.

23 “(3) CAPITAL.—

24 “(A) IN GENERAL.—The Board shall not,
25 by regulation, guideline, order or otherwise, pre-

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1 scribe or impose any capital or capital adequacy
2 rules, guidelines, standards, or requirements on
3 any subsidiary of a financial holding company
4 that is not a depository institution and—

5 “(i) is in compliance with applicable
6 capital requirements of another Federal
7 regulatory authority (including the Securi-
8 ties and Exchange Commission) or State
9 insurance authority; or

10 “(ii) is registered as an investment
11 adviser under the Investment Advisers Act
12 of 1940.

13 “(B) RULE OF CONSTRUCTION.—Subpara-
14 graph (A) shall not be construed as preventing
15 the Board from imposing capital or capital ade-
16 quacy rules, guidelines, standards, or require-
17 ments with respect to activities of a registered
18 investment adviser other than investment advi-
19 sory activities or activities incidental to invest-
20 ment advisory activities.

21 “(4) TRANSFER OF BOARD AUTHORITY TO AP-
22 PROPRIATE FEDERAL BANKING AGENCY.—

23 “(A) IN GENERAL.—In the case of any
24 bank holding company which is not significantly
25 engaged in nonbanking activities, the Board, in

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1 consultation with the appropriate Federal bank-
2 ing agency, may designate the appropriate Fed-
3 eral banking agency of the lead insured deposi-
4 tory institution subsidiary of such holding com-
5 pany as the appropriate Federal banking agen-
6 cy for the bank holding company.

7 “(B) AUTHORITY TRANSFERRED.—An
8 agency designated by the Board under subpara-
9 graph (A) shall have the same authority as the
10 Board under this Act to—

11 “(i) examine and require reports from
12 the bank holding company and any affiliate
13 of such company (other than a depository
14 institution) under section 5;

15 “(ii) approve or disapprove applica-
16 tions or transactions under section 3;

17 “(iii) take actions and impose pen-
18 alties under subsections (e) and (f) of sec-
19 tion 5 and section 8; and

20 “(iv) take actions regarding the hold-
21 ing company, any affiliate of the holding
22 company (other than a depository institu-
23 tion), or any institution-affiliated party of
24 such company or affiliate under the Fed-

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1 eral Deposit Insurance Act and any other
2 statute which the Board may designate.

3 “(C) AGENCY ORDERS.—Section 9 (of this
4 Act) and section 105 of the Bank Holding
5 Company Act Amendments of 1970 shall apply
6 to orders issued by an agency designated under
7 subparagraph (A) in the same manner such sec-
8 tions apply to orders issued by the Board.

9 “(5) FUNCTIONAL REGULATION OF SECURITIES
10 AND INSURANCE ACTIVITIES.—The Board shall defer
11 to—

12 “(A) the Securities and Exchange Commis-
13 sion with regard to all interpretations of, and
14 the enforcement of, applicable Federal securi-
15 ties laws relating to the activities, conduct, and
16 operations of registered brokers, dealers, invest-
17 ment advisers, and investment companies; and

18 “(B) the relevant State insurance authori-
19 ties with regard to all interpretations of, and
20 the enforcement of, applicable State insurance
21 laws relating to the activities, conduct, and op-
22 erations of insurance companies and insurance
23 agents.”.

1 **SEC. 112. ELIMINATION OF APPLICATION REQUIREMENT**
2 **FOR FINANCIAL HOLDING COMPANIES.**

3 (a) PREVENTION OF DUPLICATIVE FILINGS.—Sec-
4 tion 5(a) of the Bank Holding Company Act of 1956 (12
5 U.S.C. 1844(a)) is amended by adding the following new
6 sentence at the end: “A declaration filed in accordance
7 with section 6(b)(1)(E) shall satisfy the requirements of
8 this subsection with regard to the registration of a bank
9 holding company but not any requirement to file an appli-
10 cation to acquire a bank pursuant to section 3.”.

11 (b) DIVESTITURE PROCEDURES.—Section 5(e)(1) of
12 the Bank Holding Company Act of 1956 (12 U.S.C.
13 1844(e)(1)) is amended—

14 (1) by striking “Financial Institutions Super-
15 visory Act of 1966, order” and inserting “Financial
16 Institutions Supervisory Act of 1966, at the election
17 of the bank holding company—

18 “(A) order”; and

19 (2) by striking “shareholders of the bank hold-
20 ing company. Such distribution” and inserting
21 “shareholders of the bank holding company; or

22 “(B) order the bank holding company, after due
23 notice and opportunity for hearing, and after con-
24 sultation with the bank’s primary supervisor, which
25 shall be the Comptroller of the Currency in the case
26 of a national bank, and the Federal Deposit Insur-

1 ance Corporation and the appropriate State super-
2 visor in the case of an insured nonmember bank, to
3 terminate (within 120 days or such longer period as
4 the Board may direct) the ownership or control of
5 any such bank by such company.

6 “The distribution referred to in subparagraph (A)”.

7 **SEC. 113. AUTHORITY OF STATE INSURANCE REGULATOR**
8 **AND SECURITIES AND EXCHANGE COMMIS-**
9 **SION.**

10 Section 5 of the Bank Holding Company Act of 1956
11 (12 U.S.C. 1844) is amended by adding at the end the
12 following new subsection:

13 “(g) AUTHORITY OF STATE INSURANCE REGULATOR
14 AND THE SECURITIES AND EXCHANGE COMMISSION.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of law, any regulation, order, or other ac-
17 tion of the Board which requires a bank holding
18 company to provide funds or other assets to a sub-
19 sidiary insured depository institution shall not be ef-
20 fective nor enforceable if—

21 “(A) such funds or assets are to be pro-
22 vided by—

23 “(i) a bank holding company that is
24 an insurance company or is a broker or

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1 dealer registered under the Securities Ex-
2 change Act of 1934; or

3 “(ii) an affiliate of the depository in-
4 stitution which is an insurance company or
5 a broker or dealer registered under such
6 Act; and

7 “(B) the State insurance authority for the
8 insurance company or the Securities and Ex-
9 change Commission for the registered broker or
10 dealer, as the case may be, determines in writ-
11 ing sent to the holding company and the Board
12 that the holding company shall not provide such
13 funds or assets because such action would have
14 a material adverse effect on the financial condi-
15 tion of the insurance company or the broker or
16 dealer, as the case may be.

17 “(2) NOTICE TO STATE INSURANCE AUTHORITY
18 OR SEC REQUIRED.—If the Board requires a bank
19 holding company, or an affiliate of a bank holding
20 company, which is an insurance company or a
21 broker or dealer described in paragraph (1)(A) to
22 provide funds or assets to an insured depository in-
23 stitution subsidiary of the holding company pursuant
24 to any regulation, order, or other action of the
25 Board referred to in paragraph (1), the Board shall

1 promptly notify the State insurance authority for the
2 insurance company or the Securities and Exchange
3 Commission, as the case may be, of such require-
4 ment.

5 “(3) DIVESTITURE IN LIEU OF OTHER AC-
6 TION.—If the Board receives a notice described in
7 paragraph (1)(B) from a State insurance authority
8 or the Securities and Exchange Commission with re-
9 gard to a bank holding company or affiliate referred
10 to in such paragraph, the Board may order the bank
11 holding company to divest the insured depository in-
12 stitution within 180 days of receiving notice or such
13 longer period as the Board determines consistent
14 with the safe and sound operation of the insured de-
15 pository institution.

16 “(4) CONDITIONS BEFORE DIVESTITURE.—Dur-
17 ing the period beginning on the date an order to di-
18 vest is issued by the Board under paragraph (3) to
19 a bank holding company and ending on the date the
20 divestiture is completed, the Board may impose any
21 conditions or restrictions on the holding company’s
22 ownership or operation of the insured depository in-
23 stitution, including restricting or prohibiting trans-
24 actions between the insured depository institution

1 and any affiliate of the institution, as are appro-
2 priate under the circumstances.”.

3 **SEC. 114. PRUDENTIAL SAFEGUARDS.**

4 Section 5 of the Bank Holding Company Act of 1956
5 (12 U.S.C. 1844) is amended by inserting after subsection
6 (g) (as added by section 113 of this subtitle) the following
7 new subsection:

8 “(h) PRUDENTIAL SAFEGUARDS.—

9 “(1) IN GENERAL.—The Board may, by regula-
10 tion or order, impose restrictions or requirements on
11 relationships or transactions between a depository
12 institution subsidiary of a bank holding company
13 and any affiliate of such depository institution (other
14 than a subsidiary of such institution) which the
15 Board finds is consistent with the public interest,
16 the purposes of this Act, the Financial Services Act
17 of 1998, the Federal Reserve Act, and other Federal
18 law applicable to depository institution subsidiaries
19 of bank holding companies and the standards in
20 paragraph (2).

21 “(2) STANDARDS.—The Board may exercise au-
22 thority under paragraph (1) if the Board finds that
23 such action will have any of the following effects:

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1 “(A) Avoid any significant risk to the safe-
2 ty and soundness of depository institutions or
3 any Federal deposit insurance fund.

4 “(B) Enhance the financial stability of
5 bank holding companies.

6 “(C) Avoid conflicts of interest or other
7 abuses.

8 “(D) Enhance the privacy of customers of
9 depository institutions.

10 “(E) Promote the application of national
11 treatment and equality of competitive oppor-
12 tunity between nonbank affiliates owned or con-
13 trolled by domestic bank holding companies and
14 nonbank affiliates owned or controlled by for-
15 eign banks operating in the United States.

16 “(3) REVIEW.—The Board shall regularly—

17 “(A) review all restrictions or requirements
18 established pursuant to paragraph (1) to deter-
19 mine whether there is a continuing need for any
20 such restriction or requirement to carry out the
21 purposes of the Act, including any purpose de-
22 scribed in paragraph (2); and

23 “(B) modify or eliminate any restriction or
24 requirement the Board finds is no longer re-
25 quired for such purposes.”.

1 **SEC. 115. EXAMINATION OF INVESTMENT COMPANIES.**

2 (a) EXCLUSIVE COMMISSION AUTHORITY.—

3 (1) IN GENERAL.—The Commission shall be the
4 sole Federal agency with authority to inspect and ex-
5 amine any registered investment company that is not
6 a bank holding company.

7 (2) PROHIBITION ON BANKING AGENCIES.—A
8 Federal banking agency may not inspect or examine
9 any registered investment company that is not a
10 bank holding company.

11 (b) EXAMINATION RESULTS AND OTHER INFORMA-
12 TION.—The Commission shall provide to any Federal
13 banking agency, upon request, the results of any examina-
14 tion, reports, records, or other information with respect
15 to any registered investment company to the extent nec-
16 essary for the agency to carry out its statutory responsibil-
17 ities.

18 (c) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 (1) BANK HOLDING COMPANY.—The term
21 “bank holding company” has the meaning given to
22 such term in section 2 of the Bank Holding Com-
23 pany Act of 1956.

24 (2) COMMISSION.—The term “Commission”
25 means the Securities and Exchange Commission.

1 (3) FEDERAL BANKING AGENCY.—The term
2 “Federal banking agency” has the meaning given to
3 such term in section 3(z) of the Federal Deposit In-
4 surance Act.

5 (4) REGISTERED INVESTMENT COMPANY.—The
6 term “registered investment company” means an in-
7 vestment company which is registered with the Com-
8 mission under the Investment Company Act of 1940.

9 **SEC. 116. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
10 **PERVISORY, AND ENFORCEMENT AUTHORITY**
11 **OF THE BOARD.**

12 The Bank Holding Company Act of 1956 (12 U.S.C.
13 1841 et seq.) is amended by inserting after section 10 the
14 following new section:

15 **“SEC. 10A. LIMITATION ON RULEMAKING, PRUDENTIAL, SU-**
16 **PERVISORY, AND ENFORCEMENT AUTHORITY**
17 **OF THE BOARD.**

18 “(a) LIMITATION ON DIRECT ACTION.—

19 “(1) IN GENERAL.—The Board may not pre-
20 scribe regulations, issue or seek entry of orders, im-
21 pose restraints, restrictions, guidelines, require-
22 ments, safeguards, or standards, or otherwise take
23 any action under or pursuant to any provision of
24 this Act or section 8 of the Federal Deposit Insur-
25 ance Act against or with respect to a regulated sub-

1 subsidiary of a bank holding company unless the action
2 is necessary to prevent or redress an unsafe or un-
3 sound practice or breach of fiduciary duty by such
4 subsidiary that poses a material risk to—

5 “(A) the financial safety, soundness, or
6 stability of an affiliated depository institution;
7 or

8 “(B) the domestic or international pay-
9 ment system.

10 “(2) CRITERIA FOR BOARD ACTION.—The
11 Board shall not take action otherwise permitted
12 under paragraph (1) unless the Board finds that it
13 is not reasonably possible to effectively protect
14 against the material risk at issue through action di-
15 rected at or against the affiliated depository institu-
16 tion or against depository institutions generally.

17 “(b) LIMITATION ON INDIRECT ACTION.—The Board
18 may not prescribe regulations, issue or seek entry of or-
19 ders, impose restraints, restrictions, guidelines, require-
20 ments, safeguards, or standards, or otherwise take any ac-
21 tion under or pursuant to any provision of this Act or sec-
22 tion 8 of the Federal Deposit Insurance Act against or
23 with respect to a financial holding company or a wholesale
24 financial holding company where the purpose or effect of
25 doing so would be to take action indirectly against or with

1 respect to a regulated subsidiary that may not be taken
2 directly against or with respect to such subsidiary in ac-
3 cordance with subsection (a).

4 “(c) ACTIONS SPECIFICALLY AUTHORIZED.—Not-
5 withstanding subsection (a), the Board may take action
6 under this Act or section 8 of the Federal Deposit Insur-
7 ance Act to enforce compliance by a regulated subsidiary
8 with Federal law that the Board has specific jurisdiction
9 to enforce against such subsidiary.

10 “(d) REGULATED SUBSIDIARY DEFINED.—For pur-
11 poses of this section, the term ‘regulated subsidiary’
12 means any company that is not a bank holding company
13 and is—

14 “(1) a broker or dealer registered under the Se-
15 curities Exchange Act of 1934;

16 “(2) an investment adviser registered under the
17 Investment Advisers Act of 1940, with respect to the
18 investment advisory activities of such investment ad-
19 viser and activities incidental to such investment ad-
20 visory activities;

21 “(3) an investment company registered under
22 the Investment Company Act of 1940;

23 “(4) an insurance company or an insurance
24 agency subject to supervision by a State insurance
25 commission, agency, or similar authority; or

1 “(5) an entity subject to regulation by the Com-
2 modity Futures Trading Commission, with respect
3 to the commodities activities of such entity and ac-
4 tivities incidental to such commodities activities.”.

5 **Subtitle C—Subsidiaries of**
6 **National Banks**

7 **SEC. 121. PERMISSIBLE ACTIVITIES FOR SUBSIDIARIES OF**
8 **NATIONAL BANKS.**

9 (a) FINANCIAL SUBSIDIARIES OF NATIONAL
10 BANKS.—Chapter one of title LXII of the Revised Stat-
11 utes of United States (12 U.S.C. 21 et seq.) is amended—

12 (1) by redesignating section 5136A as section
13 5136C; and

14 (2) by inserting after section 5136 (12 U.S.C.
15 24) the following new section:

16 **“SEC. 5136A. SUBSIDIARIES OF NATIONAL BANKS.**

17 **“(a) SUBSIDIARIES OF NATIONAL BANKS AUTHOR-**
18 **IZED TO ENGAGE IN FINANCIAL ACTIVITIES.—**

19 **“(1) EXCLUSIVE AUTHORITY.—**No provision of
20 section 5136 or any other provision of this title
21 LXII of the Revised Statutes shall be construed as
22 authorizing a subsidiary of a national bank to en-
23 gage in, or own any share of or any other interest
24 in any company engaged in, any activity that—

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1 “(A) is not permissible for a national bank
2 to engage in directly; or

3 “(B) is conducted under terms or condi-
4 tions other than those that would govern the
5 conduct of such activity by a national bank,
6 unless a national bank is specifically authorized by
7 the express terms of a Federal statute and not by
8 implication or interpretation to acquire shares of or
9 an interest in, or to control, such subsidiary, such as
10 by paragraph (2) of this subsection and section 25A
11 of the Federal Reserve Act.

12 “(2) SPECIFIC AUTHORIZATION TO CONDUCT
13 AGENCY ACTIVITIES WHICH ARE FINANCIAL IN NA-
14 TURE.—A national bank may control a company
15 that engages in agency activities that have been de-
16 termined to be financial in nature or incidental to
17 such financial activities pursuant to and in accord-
18 ance with section 6(c) of the Bank Holding Com-
19 pany Act of 1956 if—

20 “(A) the company engages in such activi-
21 ties solely as agent and not directly or indirectly
22 as principal,

23 “(B) the national bank is well capitalized
24 and well managed, and has achieved a rating of
25 satisfactory or better at the most recent exam-

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1 ination of the bank under the Community Rein-
2 vestment Act of 1977;

3 “(C) all depository institution affiliates of
4 the national bank are well capitalized and well
5 managed, and have achieved a rating of satis-
6 factory or better at the most recent examina-
7 tion of each such depository institution under
8 the Community Reinvestment Act of 1977; and

9 “(D) the bank has received the approval of
10 the Comptroller of the Currency.

11 “(3) DEFINITIONS.—

12 “(A) COMPANY; CONTROL; SUBSIDIARY.—
13 The terms ‘company’, ‘control’, and ‘subsidiary’
14 have the meanings given to such terms in sec-
15 tion 2 of the Bank Holding Company Act of
16 1956.

17 “(B) WELL CAPITALIZED.—The term ‘well
18 capitalized’ has the same meaning as in section
19 38 of the Federal Deposit Insurance Act and,
20 for purposes of this section, the Comptroller
21 shall have exclusive jurisdiction to determine
22 whether a national bank is well capitalized.

23 “(C) WELL MANAGED.—The term ‘well
24 managed’ means—

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1 “(i) in the case of a bank that has
2 been examined, unless otherwise deter-
3 mined in writing by the Comptroller—

4 “(I) the achievement of a com-
5 posite rating of 1 or 2 under the Uni-
6 form Financial Institutions Rating
7 System (or an equivalent rating under
8 an equivalent rating system) in con-
9 nection with the most recent examina-
10 tion or subsequent review of the bank;
11 and

12 “(II) at least a rating of 2 for
13 management, if that rating is given;
14 or

15 “(ii) in the case of any national bank
16 that has not been examined, the existence
17 and use of managerial resources that the
18 Comptroller determines are satisfactory.

19 “(b) LIMITED EXCLUSIONS FROM COMMUNITY
20 NEEDS REQUIREMENTS FOR NEWLY ACQUIRED DEPOSI-
21 TORY INSTITUTIONS.—Any depository institution which
22 becomes affiliated with a national bank during the 24-
23 month period preceding the submission of an application
24 to acquire a subsidiary under subsection (a)(2), and any
25 depository institution which becomes so affiliated after the

1 approval of such application, may be excluded for purposes
2 of subsection (a)(2)(B) during the 24-month period begin-
3 ning on the date of such acquisition if—

4 “(1) the depository institution has submitted an
5 affirmative plan to the appropriate Federal banking
6 agency (as defined in section 3 of the Federal De-
7 posit Insurance Act) to take such action as may be
8 necessary in order for such institution to achieve a
9 ‘satisfactory record of meeting community credit
10 needs’, or better, at the next examination of the in-
11 stitution under the Community Reinvestment Act of
12 1977; and

13 “(2) the plan has been approved by the appro-
14 priate Federal banking agency.”.

15 (b) LIMITATION ON CERTAIN ACTIVITIES IN SUB-
16 SIDIARIES.—Section 21(a)(1) of the Banking Act of 1933
17 (12 U.S.C. 378(a)(1)) is amended—

18 (1) by inserting “, or to be a subsidiary of any
19 person, firm, corporation, association, business trust,
20 or similar organization engaged (unless such subsidi-
21 ary (A) was engaged in such securities activities as
22 of September 15, 1997, or (B) is a nondepository
23 subsidiary of a foreign bank and is not also a sub-
24 sidiary of a domestic depository institution),” after
25 “to engage at the same time”; and

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1 (2) by inserting “or any subsidiary of such
2 bank, company, or institution” after “or private
3 bankers”.

4 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) ANTITYING.—Section 106(a) of the Bank
6 Holding Company Act Amendments of 1970 is
7 amended by adding at the end the following new
8 sentence: “For purposes of this section, a subsidiary
9 of a national bank which engages in activities as an
10 agent pursuant to section 5136A(a)(2) shall be
11 deemed to be a subsidiary of a bank holding com-
12 pany, and not a subsidiary of a bank.”.

13 (2) SECTION 23B.—Section 23B(a) of the Fed-
14 eral Reserve Act (12 U.S.C. 371c-1(a)) is amended
15 by adding at the end the following new paragraph:

16 “(4) SUBSIDIARY OF NATIONAL BANK.—For
17 purposes of this section, a subsidiary of a national
18 bank which engages in activities as an agent pursu-
19 ant to section 5136A(a)(2) shall be deemed to be an
20 affiliate of the national bank and not a subsidiary of
21 the bank.”

22 (d) CLERICAL AMENDMENT.—The table of sections
23 for chapter one of title LXII of the Revised Statutes of
24 the United States is amended—

1 (1) by redesignating the item relating to section
2 5136A as section 5136C; and

3 (2) by inserting after the item relating to sec-
4 tion 5136 the following new item:

“5136A. Financial subsidiaries of national banks.”.

5 **SEC. 122. MISREPRESENTATIONS REGARDING DEPOSITORY**
6 **INSTITUTION LIABILITY FOR OBLIGATIONS**
7 **OF AFFILIATES.**

8 (a) IN GENERAL.—Chapter 47 of title 18, United
9 States Code, is amended by inserting after section 1007
10 the following new section:

11 **“§ 1008. Misrepresentations regarding financial insti-**
12 **tution liability for obligations of affiliates**

13 “(a) IN GENERAL.—No institution-affiliated party of
14 an insured depository institution or institution-affiliated
15 party of a subsidiary or affiliate of an insured depository
16 institution shall fraudulently represent that the institution
17 is or will be liable for any obligation of a subsidiary or
18 other affiliate of the institution.

19 “(b) CRIMINAL PENALTY.—Whoever violates sub-
20 section (a) shall be fined under this title, imprisoned for
21 not more than 1 year, or both.

22 “(c) INSTITUTION-AFFILIATED PARTY DEFINED.—
23 For purposes of this section, the term ‘institution-affili-
24 ated party’ with respect to a subsidiary or affiliate has
25 the same meaning as in section 3 except references to an

1 insured depository institution shall be deemed to be ref-
2 erences to a subsidiary or affiliate of an insured depository
3 institution.

4 “(d) OTHER DEFINITIONS.—For purposes of this
5 section, the terms ‘affiliate’, ‘insured depository institu-
6 tion’, and ‘subsidiary’ have same meanings as in section
7 3 of the Federal Deposit Insurance Act.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for chapter 47 of title 18, United States Code, is amended
10 by inserting after the item relating to section 1007 the
11 following new item:

“1008. Misrepresentations regarding financial institution liability for obligations
of affiliates.”.

12 **SEC. 123. REPEAL OF STOCK LOAN LIMIT IN FEDERAL RE-**
13 **SERVE ACT.**

14 Section 11 of the Federal Reserve Act (12 U.S.C.
15 248) is amended by striking the paragraph designated as
16 “(m)” and inserting “(m) [Repealed]”.

1 **Subtitle D—Wholesale Financial**
2 **Holding Companies; Wholesale**
3 **Financial Institutions**

4 **CHAPTER 1—WHOLESALE FINANCIAL**
5 **HOLDING COMPANIES**

6 **SEC. 131. WHOLESALE FINANCIAL HOLDING COMPANIES**
7 **ESTABLISHED.**

8 (a) DEFINITION AND SUPERVISION.—Section 10 of
9 the Bank Holding Company Act of 1956 (12 U.S.C. 1841
10 et seq.) is amended to read as follows:

11 **“SEC. 10. WHOLESALE FINANCIAL HOLDING COMPANIES.**

12 **“(a) COMPANIES THAT CONTROL WHOLESALE FI-**
13 **NANCIAL INSTITUTIONS.—**

14 **“(1) WHOLESALE FINANCIAL HOLDING COM-**
15 **PANY DEFINED.—**The term ‘wholesale financial
16 holding company’ means any company that—

17 **“(A) is registered as a bank holding com-**
18 **pany;**

19 **“(B) is predominantly engaged in financial**
20 **activities as defined in section 6(g)(2);**

21 **“(C) controls 1 or more wholesale financial**
22 **institutions;**

23 **“(D) does not control—**

24 **“(i) a bank other than a wholesale fi-**
25 **nancial institution;**

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1 “(ii) an insured bank other than an
2 institution permitted under subparagraph
3 (D), (F), or (G) of section 2(c)(2); or

4 “(iii) a savings association; and

5 “(E) is not a foreign bank (as defined in
6 section 1(b)(7) of the International Banking
7 Act of 1978).

8 “(2) SAVINGS ASSOCIATION TRANSITION PE-
9 RIOD.—Notwithstanding paragraph (1)(C)(iii), the
10 Board may permit a company that controls a sav-
11 ings association and that otherwise meets the re-
12 quirements of paragraph (1) to become supervised
13 under paragraph (1), if the company divests control
14 of any such savings association within such period
15 not to exceed 5 years after becoming supervised
16 under paragraph (1) as permitted by the Board.

17 “(b) SUPERVISION BY THE BOARD.—

18 “(1) IN GENERAL.—The provisions of this sec-
19 tion shall govern the reporting, examination, and
20 capital requirements of wholesale financial holding
21 companies.

22 “(2) REPORTS.—

23 “(A) IN GENERAL.—The Board from time
24 to time may require any wholesale financial
25 holding company and any subsidiary of such

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1 company to submit reports under oath to keep
2 the Board informed as to—

3 “(i) the company’s or subsidiary’s ac-
4 tivities, financial condition, policies, sys-
5 tems for monitoring and controlling finan-
6 cial and operational risks, and transactions
7 with depository institution subsidiaries of
8 the holding company; and

9 “(ii) the extent to which the company
10 or subsidiary has complied with the provi-
11 sions of this Act and regulations prescribed
12 and orders issued under this Act.

13 “(B) USE OF EXISTING REPORTS.—

14 “(i) IN GENERAL.—The Board shall,
15 to the fullest extent possible, accept re-
16 ports in fulfillment of the Board’s report-
17 ing requirements under this paragraph
18 that the wholesale financial holding com-
19 pany or any subsidiary of such company
20 has provided or been required to provide to
21 other Federal and State supervisors or to
22 appropriate self-regulatory organizations.

23 “(ii) AVAILABILITY.—A wholesale fi-
24 nancial holding company or a subsidiary of
25 such company shall provide to the Board,

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1 at the request of the Board, a report re-
2 ferred to in clause (i).

3 “(C) EXEMPTIONS FROM REPORTING RE-
4 QUIREMENTS.—

5 “(i) IN GENERAL.—The Board may,
6 by regulation or order, exempt any com-
7 pany or class of companies, under such
8 terms and conditions and for such periods
9 as the Board shall provide in such regula-
10 tion or order, from the provisions of this
11 paragraph and any regulation prescribed
12 under this paragraph.

13 “(ii) CRITERIA FOR CONSIDER-
14 ATION.—In making any determination
15 under clause (i) with regard to any exemp-
16 tion under such clause, the Board shall
17 consider, among such other factors as the
18 Board may determine to be appropriate,
19 the following factors:

20 “(I) Whether information of the
21 type required under this paragraph is
22 available from a supervisory agency
23 (as defined in section 1101(7) of the
24 Right to Financial Privacy Act of

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1 1978) or a foreign regulatory author-
2 ity of a similar type.

3 “(II) The primary business of the
4 company.

5 “(III) The nature and extent of
6 the domestic and foreign regulation of
7 the activities of the company.

8 “(3) EXAMINATIONS.—

9 “(A) LIMITED USE OF EXAMINATION AU-
10 THORITY.—The Board may make examinations
11 of each wholesale financial holding company
12 and each subsidiary of such company in order
13 to—

14 “(i) inform the Board regarding the
15 nature of the operations and financial con-
16 dition of the wholesale financial holding
17 company and its subsidiaries;

18 “(ii) inform the Board regarding—

19 “(I) the financial and operational
20 risks within the wholesale financial
21 holding company system that may af-
22 fect any depository institution owned
23 by such holding company; and

24 “(II) the systems of the holding
25 company and its subsidiaries for mon-

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1 itoring and controlling those risks;
2 and

3 “(iii) monitor compliance with the
4 provisions of this Act and those governing
5 transactions and relationships between any
6 depository institution controlled by the
7 wholesale financial holding company and
8 any of the company’s other subsidiaries.

9 “(B) RESTRICTED FOCUS OF EXAMINA-
10 TIONS.—The Board shall, to the fullest extent
11 possible, limit the focus and scope of any exam-
12 ination of a wholesale financial holding com-
13 pany under this paragraph to—

14 “(i) the holding company; and

15 “(ii) any subsidiary (other than an in-
16 sured depository institution subsidiary) of
17 the holding company that, because of the
18 size, condition, or activities of the subsidi-
19 ary, the nature or size of transactions be-
20 tween such subsidiary and any affiliated
21 depository institution, or the centralization
22 of functions within the holding company
23 system, could have a materially adverse ef-
24 fect on the safety and soundness of any de-

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1 pository institution affiliate of the holding
2 company.

3 “(C) DEFERENCE TO BANK EXAMINA-
4 TIONS.—The Board shall, to the fullest extent
5 possible, use the reports of examination of de-
6 pository institutions made by the Comptroller of
7 the Currency, the Federal Deposit Insurance
8 Corporation, the Director of the Office of Thrift
9 Supervision or the appropriate State depository
10 institution supervisory authority for the pur-
11 poses of this section.

12 “(D) DEFERENCE TO OTHER EXAMINA-
13 TIONS.—The Board shall, to the fullest extent
14 possible, address the circumstances which might
15 otherwise permit or require an examination by
16 the Board by forgoing an examination and by
17 instead reviewing the reports of examination
18 made of—

19 “(i) any registered broker or dealer or
20 any registered investment adviser by or on
21 behalf of the Commission; and

22 “(ii) any licensed insurance company
23 by or on behalf of any State government
24 insurance agency responsible for the super-
25 vision of the insurance company.

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1 “(E) CONFIDENTIALITY OF REPORTED IN-
2 FORMATION.—

3 “(i) IN GENERAL.—Notwithstanding
4 any other provision of law, the Board shall
5 not be compelled to disclose any nonpublic
6 information required to be reported under
7 this paragraph, or any information sup-
8 plied to the Board by any domestic or for-
9 eign regulatory agency, that relates to the
10 financial or operational condition of any
11 wholesale financial holding company or any
12 subsidiary of such company.

13 “(ii) COMPLIANCE WITH REQUESTS
14 FOR INFORMATION.—No provision of this
15 subparagraph shall be construed as author-
16 izing the Board to withhold information
17 from the Congress, or preventing the
18 Board from complying with a request for
19 information from any other Federal de-
20 partment or agency for purposes within the
21 scope of such department’s or agency’s ju-
22 risdiction, or from complying with any
23 order of a court of competent jurisdiction
24 in an action brought by the United States
25 or the Board.

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1 “(iii) COORDINATION WITH OTHER
2 LAW.—For purposes of section 552 of title
3 5, United States Code, this subparagraph
4 shall be considered to be a statute de-
5 scribed in subsection (b)(3)(B) of such sec-
6 tion.

7 “(iv) DESIGNATION OF CONFIDENTIAL
8 INFORMATION.—In prescribing regulations
9 to carry out the requirements of this sub-
10 section, the Board shall designate informa-
11 tion described in or obtained pursuant to
12 this paragraph as confidential information.

13 “(F) COSTS.—The cost of any examination
14 conducted by the Board under this section may
15 be assessed against, and made payable by, the
16 wholesale financial holding company.

17 “(4) CAPITAL ADEQUACY GUIDELINES.—

18 “(A) CAPITAL ADEQUACY PROVISIONS.—
19 Subject to the requirements of, and solely in ac-
20 cordance with, the terms of this paragraph, the
21 Board may adopt capital adequacy rules or
22 guidelines for wholesale financial holding com-
23 panies.

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1 “(B) METHOD OF CALCULATION.—In de-
2 veloping rules or guidelines under this para-
3 graph, the following provisions shall apply:

4 “(i) FOCUS ON DOUBLE LEVERAGE.—
5 The Board shall focus on the use by whole-
6 sale financial holding companies of debt
7 and other liabilities to fund capital invest-
8 ments in subsidiaries.

9 “(ii) NO UNWEIGHTED CAPITAL
10 RATIO.—The Board shall not, by regula-
11 tion, guideline, order, or otherwise, impose
12 under this section a capital ratio that is
13 not based on appropriate risk-weighting
14 considerations.

15 “(iii) NO CAPITAL REQUIREMENT ON
16 REGULATED ENTITIES.—The Board shall
17 not, by regulation, guideline, order or oth-
18 erwise, prescribe or impose any capital or
19 capital adequacy rules, standards, guide-
20 lines, or requirements upon any subsidiary
21 that—

22 “(I) is not a depository institu-
23 tion; and

24 “(II) is in compliance with appli-
25 cable capital requirements of another

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1 Federal regulatory authority (includ-
2 ing the Securities and Exchange Com-
3 mission) or State insurance authority.

4 “(iv) LIMITATION.—The Board shall
5 not, by regulation, guideline, order or oth-
6 erwise, prescribe or impose any capital or
7 capital adequacy rules, standards, guide-
8 lines, or requirements upon any subsidiary
9 that is not a depository institution and
10 that is registered as an investment adviser
11 under the Investment Advisers Act of
12 1940, except that this clause shall not be
13 construed as preventing the Board from
14 imposing capital or capital adequacy rules,
15 guidelines, standards, or requirements with
16 respect to activities of a registered invest-
17 ment adviser other than investment advi-
18 sory activities or activities incidental to in-
19 vestment advisory activities.

20 “(v) APPROPRIATE EXCLUSIONS.—
21 The Board shall take full account of—

22 “(I) the capital requirements
23 made applicable to any subsidiary that
24 is not a depository institution by an-

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1 other Federal regulatory authority or
2 State insurance authority; and

3 “(II) industry norms for capital-
4 ization of a company’s unregulated
5 subsidiaries and activities.

6 “(vi) INTERNAL RISK MANAGEMENT
7 MODELS.—The Board may incorporate in-
8 ternal risk management models of whole-
9 sale financial holding companies into its
10 capital adequacy guidelines or rules and
11 may take account of the extent to which
12 resources of a subsidiary depository insti-
13 tution may be used to service the debt or
14 other liabilities of the wholesale financial
15 holding company.

16 “(c) NONFINANCIAL ACTIVITIES AND INVEST-
17 MENTS.—

18 “(1) AUTHORITY FOR LIMITED AMOUNTS OF
19 NEW ACTIVITIES AND INVESTMENTS.—

20 “(A) IN GENERAL.—Notwithstanding sec-
21 tion 4(a), a wholesale financial holding company
22 may engage in activities which are not (or have
23 not been determined to be) financial in nature
24 or incidental to activities which are financial in
25 nature, or acquire and retain ownership and

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1 control of the shares of a company engaged in
2 such activities if—

3 “(i) the aggregate annual gross reve-
4 nues derived from all such activities and of
5 all such companies does not exceed 5 per-
6 cent of the consolidated annual gross reve-
7 nues of the wholesale financial holding
8 company or, in the case of a foreign bank
9 or any company that owns or controls a
10 foreign bank, the aggregate annual gross
11 revenues derived from any such activities
12 in the United States does not exceed 5 per-
13 cent of the consolidated annual gross reve-
14 nues of the foreign bank or company in the
15 United States derived from any branch,
16 agency, commercial lending company, or
17 depository institution controlled by the for-
18 eign bank or company and any subsidiary
19 engaged in the United States in activities
20 permissible under section 4 or 6 or this
21 subsection;

22 “(ii) the consolidated total assets of
23 any company the shares of which are ac-
24 quired pursuant to this subsection are less
25 than \$750,000,000 at the time the shares

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1 are acquired by the wholesale financial
2 holding company; and

3 “(iii) such company provides notice to
4 the Board within 30 days of commencing
5 the activity or acquiring the ownership or
6 control.

7 “(B) INCLUSION OF GRANDFATHERED AC-
8 TIVITIES.—For purposes of determining compli-
9 ance with the limits contained in subparagraph
10 (A), the gross revenues derived from all activi-
11 ties conducted and companies the shares of
12 which are held under paragraph (2) shall be
13 considered to be derived or held under this
14 paragraph.

15 “(C) REPORT.—No later than 5 years
16 after the date of enactment of the Financial
17 Services Act of 1998, the Board shall submit to
18 the Congress a report regarding the activities
19 conducted and companies held pursuant to this
20 paragraph and the effect, if any, that affili-
21 ations permitted under this paragraph have had
22 on affiliated depository institutions. The report
23 shall include recommendations regarding the
24 appropriateness of retaining, increasing, or de-

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1 creasing the limits contained in those provi-
2 sions.

3 “(2) GRANDFATHERED ACTIVITIES.—

4 “(A) IN GENERAL.—Notwithstanding para-
5 graph (1)(A) and section 4(a), a company that
6 becomes a wholesale financial holding company
7 may continue to engage, directly or indirectly,
8 in any activity and may retain ownership and
9 control of shares of a company engaged in any
10 activity if—

11 “(i) on the date of the enactment of
12 the Financial Services Act of 1998, such
13 wholesale financial holding company was
14 lawfully engaged in that nonfinancial activ-
15 ity, held the shares of such company, or
16 had entered into a contract to acquire
17 shares of any company engaged in such ac-
18 tivity; and

19 “(ii) the company engaged in such ac-
20 tivity continues to engage only in the same
21 activities that such company conducted on
22 the date of the enactment of the Financial
23 Services Act of 1998, and other activities
24 permissible under this Act.

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1 “(B) NO EXPANSION OF GRANDFATHERED
2 COMMERCIAL ACTIVITIES THROUGH MERGER OR
3 CONSOLIDATION.—A wholesale financial holding
4 company that engages in activities or holds
5 shares pursuant to this paragraph, or a subsidi-
6 ary of such wholesale financial holding com-
7 pany, may not acquire, in any merger, consoli-
8 dation, or other type of business combination,
9 assets of any other company which is engaged
10 in any activity which the Board has not deter-
11 mined to be financial in nature or incidental to
12 activities that are financial in nature under sec-
13 tion 6(c).

14 “(C) LIMITATION TO SINGLE EXEMP-
15 TION.—No company that engages in any activ-
16 ity or controls any shares under subsection (f)
17 or (g) of section 6 may engage in any activity
18 or own any shares pursuant to this paragraph
19 or paragraph (1).

20 “(3) COMMODITIES.—

21 “(A) IN GENERAL.—Notwithstanding sec-
22 tion 4(a), a wholesale financial holding company
23 which was predominately engaged as of Janu-
24 ary 1, 1997, in financial activities in the United
25 States (or any successor to any such company)

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1 may engage in, or directly or indirectly own or
2 control shares of a company engaged in, activi-
3 ties related to the trading, sale, or investment
4 in commodities and underlying physical prop-
5 erties that were not permissible for bank hold-
6 ing companies to conduct in the United States
7 as of January 1, 1997, if such wholesale finan-
8 cial holding company, or any subsidiary of such
9 holding company, was engaged directly, indi-
10 rectly, or through any such company in any of
11 such activities as of January 1, 1997, in the
12 United States.

13 “(B) LIMITATION.—Notwithstanding para-
14 graph (1)(A)(i), the attributed aggregate con-
15 solidated assets of a wholesale financial holding
16 company held under the authority granted
17 under this paragraph and not otherwise per-
18 mitted to be held by all wholesale financial
19 holding companies under this section may not
20 exceed 5 percent of the total consolidated assets
21 of the wholesale financial holding company, ex-
22 cept that the Board may increase such percent-
23 age of total consolidated assets by such
24 amounts and under such circumstances as the

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1 Board considers appropriate, consistent with
2 the purposes of this Act.

3 “(4) CROSS MARKETING RESTRICTIONS.—A
4 wholesale financial holding company shall not per-
5 mit—

6 “(A) any company whose shares it owns or
7 controls pursuant to paragraph (1), (2), or (3)
8 to offer or market any product or service of an
9 affiliated wholesale financial institution; or

10 “(B) any affiliated wholesale financial in-
11 stitution to offer or market any product or serv-
12 ice of any company whose shares are owned or
13 controlled by such wholesale financial holding
14 company pursuant to such paragraphs.

15 “(d) QUALIFICATION OF FOREIGN BANK AS WHOLE-
16 SALE FINANCIAL HOLDING COMPANY.—

17 “(1) IN GENERAL.—Any foreign bank, or any
18 company that owns or controls a foreign bank,
19 that—

20 “(A) operates a branch, agency, or com-
21 mercial lending company in the United States,
22 including a foreign bank or company that owns
23 or controls a wholesale financial institution; and

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1 “(B) owns, controls, or is affiliated with a
2 security affiliate that engages in underwriting
3 corporate equity securities,
4 may request a determination from the Board that
5 such bank or company be treated as a wholesale fi-
6 nancial holding company for purposes of subsection
7 (c).

8 “(2) CONDITIONS FOR TREATMENT AS A
9 WHOLESALE FINANCIAL HOLDING COMPANY.—A for-
10 eign bank and a company that owns or controls a
11 foreign bank may not be treated as a wholesale fi-
12 nancial holding company unless the bank and com-
13 pany meet and continue to meet the following cri-
14 teria:

15 “(A) NO INSURED DEPOSITS.—No deposits
16 held directly by a foreign bank or through an
17 affiliate (other than an institution described in
18 subparagraph (D) or (F) of section 2(c)(2)) are
19 insured under the Federal Deposit Insurance
20 Act.

21 “(B) CAPITAL STANDARDS.—The foreign
22 bank meets risk-based capital standards com-
23 parable to the capital standards required for a
24 wholesale financial institution, giving due re-

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1 gard to the principle of national treatment and
2 equality of competitive opportunity.

3 “(C) TRANSACTION WITH AFFILIATES.—
4 Transactions between a branch, agency, or com-
5 mercial lending company subsidiary of the for-
6 eign bank in the United States, and any securi-
7 ties affiliate or company in which the foreign
8 bank (or any company that owns or controls
9 such foreign bank) has invested pursuant to
10 subsection (d) comply with the provisions of
11 sections 23A and 23B of the Federal Reserve
12 Act in the same manner and to the same extent
13 as such transactions would be required to com-
14 ply with such sections if the bank were a mem-
15 ber bank.

16 “(3) TREATMENT AS A WHOLESALE FINANCIAL
17 INSTITUTION.—Any foreign bank which is, or is af-
18 filiated with a company which is, treated as a whole-
19 sale financial holding company under this subsection
20 shall be treated as a wholesale financial institution
21 for purposes of subsection (c)(4) of this section and
22 subsections (c)(1)(C) and (c)(3) of section 9B of the
23 Federal Reserve Act, and any such foreign bank or
24 company shall be subject to paragraphs (3), (4), and
25 (5) of section 9B(d) of the Federal Reserve Act, ex-

1 cept that the Board may adopt such modifications,
2 conditions, or exemptions as the Board deems appro-
3 priate, giving due regard to the principle of national
4 treatment and equality of competitive opportunity.

5 “(4) NONAPPLICABILITY OF OTHER EXEMP-
6 TION.—Any foreign bank or company which is treat-
7 ed as a wholesale financial holding company under
8 this subsection shall not be eligible for any exception
9 described in section 2(h).

10 “(5) SUPERVISION OF FOREIGN BANK WHICH
11 MAINTAINS NO BANKING PRESENCE OTHER THAN
12 CONTROL OF A WHOLESALE FINANCIAL INSTITU-
13 TION.—A foreign bank that owns or controls a
14 wholesale financial institution but does not operate
15 a branch, agency, or commercial lending company in
16 the United States (and any company that owns or
17 controls such foreign bank) may request a deter-
18 mination from the Board that such bank or com-
19 pany be treated as a wholesale financial holding
20 company for purposes of subsection (c), except that
21 such bank or company shall be subject to the restric-
22 tions of paragraphs (2)(A), (3), and (4) of this sub-
23 section.

24 “(6) NO EFFECT ON OTHER PROVISIONS.—This
25 section shall not be construed as limiting the author-

1 ity of the Board under the International Banking
2 Act of 1978 with respect to the regulation, super-
3 vision, or examination of foreign banks and their of-
4 fices and affiliates in the United States.

5 “(7) APPLICABILITY OF COMMUNITY REINVEST-
6 MENT ACT OF 1977.—The branches in the United
7 States of a foreign bank that is, or is affiliated with
8 a company that is, treated as a wholesale financial
9 holding company shall be subject to section
10 9B(b)(11) of the Federal Reserve Act as if the for-
11 eign bank were a wholesale financial institution
12 under such section. The Board and the Comptroller
13 of the Currency shall apply the provisions of sections
14 803(2), 804, and 807(1) of the Community Rein-
15 vestment Act of 1977 to branches of foreign banks
16 which receive only such deposits as are permissible
17 for receipt by a corporation organized under section
18 25A of the Federal Reserve Act, in the same manner
19 and to the same extent such sections apply to such
20 a corporation.”.

21 (b) UNINSURED STATE BANKS.—Section 9 of the
22 Federal Reserve Act (U.S.C. 321 et seq.) is amended by
23 adding at the end the following new paragraph:

24 “(24) ENFORCEMENT AUTHORITY OVER UNIN-
25 SURED STATE MEMBER BANKS.—Section 3(u) of the

1 Federal Deposit Insurance Act, subsections (j) and
2 (k) of section 7 of such Act, and subsections (b)
3 through (n), (s), (u), and (v) of section 8 of such
4 Act shall apply to an uninsured State member bank
5 in the same manner and to the same extent such
6 provisions apply to an insured State member bank
7 and any reference in any such provision to ‘insured
8 depository institution’ shall be deemed to be a ref-
9 erence to ‘uninsured State member bank’ for pur-
10 poses of this paragraph.”.

11 **SEC. 132. AUTHORIZATION TO RELEASE REPORTS.**

12 (a) FEDERAL RESERVE ACT.—The last sentence of
13 the 8th undesignated paragraph of section 9 of the Fed-
14 eral Reserve Act (12 U.S.C. 326) is amended to read as
15 follows: “The Board of Governors of the Federal Reserve
16 System, at its discretion, may furnish reports of examina-
17 tion or other confidential supervisory information concern-
18 ing State member banks or any other entities examined
19 under any other authority of the Board to any Federal
20 or State authorities with supervisory or regulatory author-
21 ity over the examined entity, to officers, directors, or re-
22 ceivers of the examined entity, and to any other person
23 that the Board determines to be proper.”.

24 (b) COMMODITY FUTURES TRADING COMMISSION.—

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1 (1) Section 1101(7) of the Right to Financial
2 Privacy Act of 1978 (12 U.S.C. 3401(7)) is amend-
3 ed—

4 (A) by redesignating subparagraphs (G)
5 and (H) as subparagraphs (H) and (I), respec-
6 tively; and

7 (B) by inserting after subparagraph (F)
8 the following new subparagraph:

9 “(G) the Commodity Futures Trading
10 Commission; or” and

11 (2) Section 1112(e) of the Right to Financial
12 Privacy Act (12 U.S.C. 3412(e)) is amended by
13 striking “and the Securities and Exchange Commis-
14 sion” and inserting “, the Securities and Exchange
15 Commission, and the Commodity Futures Trading
16 Commission”.

17 **SEC. 133. CONFORMING AMENDMENTS.**

18 (a) BANK HOLDING COMPANY ACT OF 1956.—

19 (1) DEFINITIONS.—Section 2 of the Bank
20 Holding Company Act of 1956 (12 U.S.C. 1842) is
21 amended by adding at the end the following new
22 subsections:

23 “(p) WHOLESALE FINANCIAL INSTITUTION.—The
24 term ‘wholesale financial institution’ means a wholesale fi-

1 nancial institution subject to section 9B of the Federal
2 Reserve Act.

3 “(q) COMMISSION.—The term ‘Commission’ means
4 the Securities and Exchange Commission.

5 “(r) DEPOSITORY INSTITUTION.—The term ‘deposi-
6 tory institution’—

7 “(1) has the meaning given to such term in sec-
8 tion 3 of the Federal Deposit Insurance Act; and

9 “(2) includes a wholesale financial institution.”.

10 (2) DEFINITION OF BANK INCLUDES WHOLE-
11 SALE FINANCIAL INSTITUTION.—Section 2(c)(1) of
12 the Bank Holding Company Act of 1956 (12 U.S.C.
13 1841(c)(1)) is amended by adding at the end the fol-
14 lowing new subparagraph:

15 “(C) A wholesale financial institution.”.

16 (3) INCORPORATED DEFINITIONS.—Section
17 2(n) of the Bank Holding Company Act of 1956 (12
18 U.S.C. 1841(n)) is amended by inserting “‘insured
19 bank’,” after “‘in danger of default’,”.

20 (4) EXCEPTION TO DEPOSIT INSURANCE RE-
21 QUIREMENT.—Section 3(e) of the Bank Holding
22 Company Act of 1956 (12 U.S.C. 1842(e)) is
23 amended by adding at the end the following: “This
24 subsection shall not apply to a wholesale financial
25 institution.”

1 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
2 3(q)(2)(A) of the Federal Deposit Insurance Act (12
3 U.S.C. 1813(q)(2)(A)) is amended to read as follows:

4 “(A) any State member insured bank (ex-
5 cept a District bank) and any wholesale finan-
6 cial institution as authorized pursuant to sec-
7 tion 9B of the Federal Reserve Act;”.

8 **CHAPTER 2—WHOLESALE FINANCIAL**
9 **INSTITUTIONS**

10 **SEC. 136. WHOLESALE FINANCIAL INSTITUTIONS.**

11 (a) NATIONAL WHOLESALE FINANCIAL INSTITU-
12 TIONS.—

13 (1) IN GENERAL.—Chapter one of title LXII of
14 the Revised Statutes of the United States (12
15 U.S.C. 21 et seq.) is amended by inserting after sec-
16 tion 5136A (as added by section 121(a) of this title)
17 the following new section:

18 **“SEC. 5136B. NATIONAL WHOLESALE FINANCIAL INSTITU-**
19 **TIONS.**

20 “(a) AUTHORIZATION OF THE COMPTROLLER RE-
21 QUIRED.—A national bank may apply to the Comptroller
22 on such forms and in accordance with such regulations
23 as the Comptroller may prescribe, for permission to oper-
24 ate as a national wholesale financial institution.

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1 “(b) REGULATION.—A national wholesale financial
2 institution may exercise, in accordance with such institu-
3 tion’s articles of incorporation and regulations issued by
4 the Comptroller, all the powers and privileges of a national
5 bank formed in accordance with section 5133 of the Re-
6 vised Statutes of the United States, subject to section 9B
7 of the Federal Reserve Act and the limitations and restric-
8 tions contained therein.

9 “(c) COMMUNITY REINVESTMENT ACT OF 1977.—A
10 national wholesale financial institution shall be subject to
11 the Community Reinvestment Act of 1977.

12 “(d) EXAMINATION REPORTS.—The Comptroller of
13 the Currency shall, to the fullest extent possible, use the
14 report of examinations made by the Board of Governors
15 of the Federal Reserve System of a wholesale financial in-
16 stitution.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for chapter one of title LXII of the Revised
19 Statutes of the United States is amended by insert-
20 ing after the item relating to section 5136A (as
21 added by section 121(d) of this title) the following
22 new item:

“5136B. National wholesale financial institutions.”.

23 (b) STATE WHOLESALE FINANCIAL INSTITUTIONS.—
24 The Federal Reserve Act (12 U.S.C. 221 et seq.) is

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1 amended by inserting after section 9A the following new
2 section:

3 **“SEC. 9B. WHOLESALE FINANCIAL INSTITUTIONS.**

4 “(a) APPLICATION FOR MEMBERSHIP AS WHOLE-
5 SALE FINANCIAL INSTITUTION.—

6 “(1) APPLICATION REQUIRED.—

7 “(A) IN GENERAL.—Any bank may apply
8 to the Board of Governors of the Federal Re-
9 serve System to become a wholesale financial
10 institution and, as a wholesale financial institu-
11 tion, to subscribe to the stock of the Federal re-
12 serve bank organized within the district where
13 the applying bank is located.

14 “(B) TREATMENT AS MEMBER BANK.—
15 Any application under subparagraph (A) shall
16 be treated as an application under, and shall be
17 subject to the provisions of, section 9.

18 “(2) INSURANCE TERMINATION.—No bank the
19 deposits of which are insured under the Federal De-
20 posit Insurance Act may become a wholesale finan-
21 cial institution unless it has met all requirements
22 under that Act for voluntary termination of deposit
23 insurance.

24 “(b) GENERAL REQUIREMENTS APPLICABLE TO
25 WHOLESALE FINANCIAL INSTITUTIONS.—

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1 “(1) FEDERAL RESERVE ACT.—Except as oth-
2 erwise provided in this section, wholesale financial
3 institutions shall be member banks and shall be sub-
4 ject to the provisions of this Act that apply to mem-
5 ber banks to the same extent and in the same man-
6 ner as State member insured banks, except that a
7 wholesale financial institution may terminate mem-
8 bership under this Act only with the prior written
9 approval of the Board and on terms and conditions
10 that the Board determines are appropriate to carry
11 out the purposes of this Act.

12 “(2) PROMPT CORRECTIVE ACTION.—A whole-
13 sale financial institution shall be deemed to be an in-
14 sured depository institution for purposes of section
15 38 of the Federal Deposit Insurance Act except
16 that—

17 “(A) the relevant capital levels and capital
18 measures for each capital category shall be the
19 levels specified by the Board for wholesale fi-
20 nancial institutions; and

21 “(B) all references to the appropriate Fed-
22 eral banking agency or to the Corporation in
23 that section shall be deemed to be references to
24 the Board.

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1 “(3) ENFORCEMENT AUTHORITY.—Subsections
2 (j) and (k) of section 7, subsections (b) through (n),
3 (s), and (v) of section 8, and section 19 of the Fed-
4 eral Deposit Insurance Act shall apply to a wholesale
5 financial institution in the same manner and to the
6 same extent as such provisions apply to State mem-
7 ber insured banks and any reference in such sections
8 to an insured depository institution shall be deemed
9 to include a reference to a wholesale financial insti-
10 tution.

11 “(4) CERTAIN OTHER STATUTES APPLICA-
12 BLE.—A wholesale financial institution shall be
13 deemed to be a banking institution, and the Board
14 shall be the appropriate Federal banking agency for
15 such bank and all such bank’s affiliates, for pur-
16 poses of the International Lending Supervision Act.

17 “(5) BANK MERGER ACT.—A wholesale finan-
18 cial institution shall be subject to sections 18(c) and
19 44 of the Federal Deposit Insurance Act in the same
20 manner and to the same extent the wholesale finan-
21 cial institution would be subject to such sections if
22 the institution were a State member insured bank.

23 “(6) BRANCHING.—Notwithstanding any other
24 provision of law, a wholesale financial institution
25 may establish and operate a branch at any location

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1 on such terms and conditions as established by the
2 Board and, in the case of a State-chartered whole-
3 sale financial institution, with the approval of the
4 Board, and, in the case of a national bank wholesale
5 financial institution, with the approval of the Comp-
6 troller of the Currency.

7 “(7) ACTIVITIES OF OUT-OF-STATE BRANCHES
8 OF WHOLESALE FINANCIAL INSTITUTIONS.—

9 “(A) GENERAL.—A State-chartered whole-
10 sale financial institution shall be deemed a
11 State bank and an insured State bank and a
12 national wholesale financial institution shall be
13 deemed a national bank for purposes of para-
14 graphs (1), (2), and (3) of section 24(j) of the
15 Federal Deposit Insurance Act.

16 “(B) DEFINITIONS.—The following defini-
17 tions shall apply solely for purposes of applying
18 paragraph (1):

19 “(i) HOME STATE.—The term ‘home
20 State’ means—

21 “(I) with respect to a national
22 wholesale financial institution, the
23 State in which the main office of the
24 institution is located; and

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1 “(II) with respect to a State-
2 chartered wholesale financial institu-
3 tion, the State by which the institu-
4 tion is chartered.

5 “(ii) HOST STATE.—The term ‘host
6 State’ means a State, other than the home
7 State of the wholesale financial institution,
8 in which the institution maintains, or seeks
9 to establish and maintain, a branch.

10 “(iii) OUT-OF-STATE BANK.—The
11 term ‘out-of-State bank’ means, with re-
12 spect to any State, a wholesale financial
13 institution whose home State is another
14 State.

15 “(8) DISCRIMINATION REGARDING INTEREST
16 RATES.—Section 27 of the Federal Deposit Insur-
17 ance Act shall apply to State-chartered wholesale fi-
18 nancial institutions in the same manner and to the
19 same extent as such provisions apply to State mem-
20 ber insured banks and any reference in such section
21 to a State-chartered insured depository institution
22 shall be deemed to include a reference to a State-
23 chartered wholesale financial institution.

24 “(9) PREEMPTION OF STATE LAWS REQUIRING
25 DEPOSIT INSURANCE FOR WHOLESALE FINANCIAL

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1 INSTITUTIONS.—The appropriate State banking au-
2 thority may grant a charter to a wholesale financial
3 institution notwithstanding any State constitution or
4 statute requiring that the institution obtain insur-
5 ance of its deposits and any such State constitution
6 or statute is hereby preempted solely for purposes of
7 this paragraph.

8 “(10) PARITY FOR WHOLESALE FINANCIAL IN-
9 STITUTIONS.—A State bank that is a wholesale fi-
10 nancial institution under this section shall have all
11 of the rights, powers, privileges, and immunities (in-
12 cluding those derived from status as a federally
13 chartered institution) of and as if it were a national
14 bank, subject to such terms and conditions as estab-
15 lished by the Board.

16 “(11) COMMUNITY REINVESTMENT ACT OF
17 1977.—A State wholesale financial institution shall
18 be subject to the Community Reinvestment Act of
19 1977.

20 “(c) SPECIFIC REQUIREMENTS APPLICABLE TO
21 WHOLESALE FINANCIAL INSTITUTIONS.—

22 “(1) LIMITATIONS ON DEPOSITS.—

23 “(A) MINIMUM AMOUNT.—

24 “(i) IN GENERAL.—No wholesale fi-
25 nancial institution may receive initial de-

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1 posits of \$100,000 or less, other than on
2 an incidental and occasional basis.

3 “(ii) LIMITATION ON DEPOSITS OF
4 LESS THAN \$100,000.—No wholesale finan-
5 cial institution may receive initial deposits
6 of \$100,000 or less if such deposits con-
7 stitute more than 5 percent of the institu-
8 tion’s total deposits.

9 “(B) NO DEPOSIT INSURANCE.—No depos-
10 its held by a wholesale financial institution shall
11 be insured deposits under the Federal Deposit
12 Insurance Act.

13 “(C) ADVERTISING AND DISCLOSURE.—
14 The Board shall prescribe regulations pertain-
15 ing to advertising and disclosure by wholesale
16 financial institutions to ensure that each deposi-
17 tor is notified that deposits at the wholesale fi-
18 nancial institution are not federally insured or
19 otherwise guaranteed by the United States Gov-
20 ernment.

21 “(2) MINIMUM CAPITAL LEVELS APPLICABLE
22 TO WHOLESALE FINANCIAL INSTITUTIONS.—The
23 Board shall, by regulation, adopt capital require-
24 ments for wholesale financial institutions—

1 “(A) to account for the status of wholesale
2 financial institutions as institutions that accept
3 deposits that are not insured under the Federal
4 Deposit Insurance Act; and

5 “(B) to provide for the safe and sound op-
6 eration of the wholesale financial institution
7 without undue risk to creditors or other per-
8 sons, including Federal reserve banks, engaged
9 in transactions with the bank.

10 “(3) ADDITIONAL REQUIREMENTS APPLICABLE
11 TO WHOLESALE FINANCIAL INSTITUTIONS.—In addi-
12 tion to any requirement otherwise applicable to State
13 member insured banks or applicable, under this sec-
14 tion, to wholesale financial institutions, the Board
15 may impose, by regulation or order, upon wholesale
16 financial institutions—

17 “(A) limitations on transactions, direct or
18 indirect, with affiliates to prevent—

19 “(i) the transfer of risk to the deposit
20 insurance funds; or

21 “(ii) an affiliate from gaining access
22 to, or the benefits of, credit from a Federal
23 reserve bank, including overdrafts at a
24 Federal reserve bank;

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1 “(B) special clearing balance requirements;
2 and

3 “(C) any additional requirements that the
4 Board determines to be appropriate or nec-
5 essary to—

6 “(i) promote the safety and soundness
7 of the wholesale financial institution or any
8 insured depository institution affiliate of
9 the wholesale financial institution;

10 “(ii) prevent the transfer of risk to
11 the deposit insurance funds; or

12 “(iii) protect creditors and other per-
13 sons, including Federal reserve banks, en-
14 gaged in transactions with the wholesale fi-
15 nancial institution.

16 “(4) EXEMPTIONS FOR WHOLESALE FINANCIAL
17 INSTITUTIONS.—The Board may, by regulation or
18 order, exempt any wholesale financial institution
19 from any provision applicable to a member bank
20 that is not a wholesale financial institution, if the
21 Board finds that such exemption is not inconsistent
22 with—

23 “(A) the promotion of the safety and
24 soundness of the wholesale financial institution

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1 or any insured depository institution affiliate of
2 the wholesale financial institution;

3 “(B) the protection of the deposit insur-
4 ance funds; and

5 “(C) the protection of creditors and other
6 persons, including Federal reserve banks, en-
7 gaged in transactions with the wholesale finan-
8 cial institution.

9 “(5) LIMITATION ON TRANSACTIONS BETWEEN
10 A WHOLESALE FINANCIAL INSTITUTION AND AN IN-
11 SURED BANK.—For purposes of section 23A(d)(1) of
12 the Federal Reserve Act, a wholesale financial insti-
13 tution that is affiliated with an insured bank shall
14 not be a bank.

15 “(6) NO EFFECT ON OTHER PROVISIONS.—This
16 section shall not be construed as limiting the
17 Board’s authority over member banks under any
18 other provision of law, or to create any obligation for
19 any Federal reserve bank to make, increase, renew,
20 or extend any advance or discount under this Act to
21 any member bank or other depository institution.

22 “(d) CAPITAL AND MANAGERIAL REQUIREMENTS.—

23 “(1) IN GENERAL.—A wholesale financial insti-
24 tution shall be well capitalized and well managed.

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1 “(2) NOTICE TO COMPANY.—The Board shall
2 promptly provide notice to a company that controls
3 a wholesale financial institution whenever such
4 wholesale financial institution is not well capitalized
5 or well managed.

6 “(3) AGREEMENT TO RESTORE INSTITUTION.—
7 Within 45 days of receipt of a notice under para-
8 graph (2) (or such additional period not to exceed
9 90 days as the Board may permit), the company
10 shall execute an agreement acceptable to the Board
11 to restore the wholesale financial institution to com-
12 pliance with all of the requirements of paragraph
13 (1).

14 “(4) LIMITATIONS UNTIL INSTITUTION RE-
15 STORED.—Until the wholesale financial institution is
16 restored to compliance with all of the requirements
17 of paragraph (1), the Board may impose such limi-
18 tations on the conduct or activities of the company
19 or any affiliate of the company as the Board deter-
20 mines to be appropriate under the circumstances.

21 “(5) FAILURE TO RESTORE.—If the company
22 does not execute and implement an agreement in ac-
23 cordance with paragraph (3), comply with any limi-
24 tation imposed under paragraph (4), restore the
25 wholesale financial institution to well capitalized sta-

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1 tus within 180 days after receipt by the company of
2 the notice described in paragraph (2), or restore the
3 wholesale financial institution to well managed sta-
4 tus within such period as the Board may permit, the
5 company shall, under such terms and conditions as
6 may be imposed by the Board and subject to such
7 extension of time as may be granted in the Board's
8 discretion, divest control of its subsidiary depository
9 institutions.

10 “(6) WELL MANAGED DEFINED.—For purposes
11 of this subsection, the term ‘well managed’ has the
12 same meaning as in section 2 of the Bank Holding
13 Company Act of 1956.

14 “(e) CONSERVATORSHIP AUTHORITY.—

15 “(1) IN GENERAL.—The Board may appoint a
16 conservator to take possession and control of a
17 wholesale financial institution to the same extent
18 and in the same manner as the Comptroller of the
19 Currency may appoint a conservator for a national
20 bank under section 203 of the Bank Conservation
21 Act, and the conservator shall exercise the same
22 powers, functions, and duties, subject to the same
23 limitations, as are provided under such Act for con-
24 servators of national banks.

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1 “(2) BOARD AUTHORITY.—The Board shall
2 have the same authority with respect to any con-
3 servator appointed under paragraph (1) and the
4 wholesale financial institution for which such con-
5 servator has been appointed as the Comptroller of
6 the Currency has under the Bank Conservation Act
7 with respect to a conservator appointed under such
8 Act and a national bank for which the conservator
9 has been appointed.

10 “(f) EXCLUSIVE JURISDICTION.—Subsections (c) and
11 (e) of section 43 of the Federal Deposit Insurance Act
12 shall not apply to any wholesale financial institution.”.

13 (c) VOLUNTARY TERMINATION OF INSURED STATUS
14 BY CERTAIN INSTITUTIONS.—

15 (1) SECTION 8 DESIGNATIONS.—Section 8(a) of
16 the Federal Deposit Insurance Act (12 U.S.C.
17 1818(a)) is amended—

18 (A) by striking paragraph (1); and

19 (B) by redesignating paragraphs (2)
20 through (10) as paragraphs (1) through (9), re-
21 spectively.

22 (2) VOLUNTARY TERMINATION OF INSURED
23 STATUS.—The Federal Deposit Insurance Act (12
24 U.S.C. 1811 et seq.) is amended by inserting after
25 section 8 the following new section:

1 **“SEC. 8A. VOLUNTARY TERMINATION OF STATUS AS IN-**
2 **SURED DEPOSITORY INSTITUTION.**

3 “(a) IN GENERAL.—Except as provided in subsection
4 (b), an insured State bank or a national bank may volun-
5 tarily terminate such bank’s status as an insured deposi-
6 tory institution in accordance with regulations of the Cor-
7 poration if—

8 “(1) the bank provides written notice of the
9 bank’s intent to terminate such insured status—

10 “(A) to the Corporation and the Board of
11 Governors of the Federal Reserve System not
12 less than 6 months before the effective date of
13 such termination; and

14 “(B) to all depositors at such bank, not
15 less than 6 months before the effective date of
16 the termination of such status; and

17 “(2) either—

18 “(A) the deposit insurance fund of which
19 such bank is a member equals or exceeds the
20 fund’s designated reserve ratio as of the date
21 the bank provides a written notice under para-
22 graph (1) and the Corporation determines that
23 the fund will equal or exceed the applicable des-
24 ignated reserve ratio for the 2 semiannual as-
25 sessment periods immediately following such
26 date; or

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1 “(B) the Corporation and the Board of
2 Governors of the Federal Reserve System ap-
3 proved the termination of the bank’s insured
4 status and the bank pays an exit fee in accord-
5 ance with subsection (e).

6 “(b) EXCEPTION.—Subsection (a) shall not apply
7 with respect to—

8 “(1) an insured savings association; or

9 “(2) an insured branch that is required to be
10 insured under subsection (a) or (b) of section 6 of
11 the International Banking Act of 1978.

12 “(c) ELIGIBILITY FOR INSURANCE TERMINATED.—
13 Any bank that voluntarily elects to terminate the bank’s
14 insured status under subsection (a) shall not be eligible
15 for insurance on any deposits or any assistance authorized
16 under this Act after the period specified in subsection
17 (f)(1).

18 “(d) INSTITUTION MUST BECOME WHOLESALE FI-
19 NANCIAL INSTITUTION OR TERMINATE DEPOSIT-TAKING
20 ACTIVITIES.—Any depository institution which voluntarily
21 terminates such institution’s status as an insured deposi-
22 tory institution under this section may not, upon termi-
23 nation of insurance, accept any deposits unless the institu-
24 tion is a wholesale financial institution subject to section
25 9B of the Federal Reserve Act.

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1 “(e) EXIT FEES.—

2 “(1) IN GENERAL.—Any bank that voluntarily
3 terminates such bank’s status as an insured deposi-
4 tory institution under this section shall pay an exit
5 fee in an amount that the Corporation determines is
6 sufficient to account for the institution’s pro rata
7 share of the amount (if any) which would be re-
8 quired to restore the relevant deposit insurance fund
9 to the fund’s designated reserve ratio as of the date
10 the bank provides a written notice under subsection
11 (a)(1).

12 “(2) PROCEDURES.—The Corporation shall pre-
13 scribe, by regulation, procedures for assessing any
14 exit fee under this subsection.

15 “(f) TEMPORARY INSURANCE OF DEPOSITS INSURED
16 AS OF TERMINATION.—

17 “(1) TRANSITION PERIOD.—The insured depos-
18 its of each depositor in a State bank or a national
19 bank on the effective date of the voluntary termi-
20 nation of the bank’s insured status, less all subse-
21 quent withdrawals from any deposits of such deposi-
22 tor, shall continue to be insured for a period of not
23 less than 6 months and not more than 2 years, as
24 determined by the Corporation. During such period,
25 no additions to any such deposits, and no new de-

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1 posits in the depository institution made after the ef-
2 fective date of such termination shall be insured by
3 the Corporation.

4 “(2) TEMPORARY ASSESSMENTS; OBLIGATIONS
5 AND DUTIES.—During the period specified in para-
6 graph (1) with respect to any bank, the bank shall
7 continue to pay assessments under section 7 as if
8 the bank were an insured depository institution. The
9 bank shall, in all other respects, be subject to the
10 authority of the Corporation and the duties and obli-
11 gations of an insured depository institution under
12 this Act during such period, and in the event that
13 the bank is closed due to an inability to meet the de-
14 mands of the bank’s depositors during such period,
15 the Corporation shall have the same powers and
16 rights with respect to such bank as in the case of
17 an insured depository institution.

18 “(g) ADVERTISEMENTS.—

19 “(1) IN GENERAL.—A bank that voluntarily
20 terminates the bank’s insured status under this sec-
21 tion shall not advertise or hold itself out as having
22 insured deposits, except that the bank may advertise
23 the temporary insurance of deposits under sub-
24 section (f) if, in connection with any such advertise-
25 ment, the advertisement also states with equal prom-

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1 inence that additions to deposits and new deposits
2 made after the effective date of the termination are
3 not insured.

4 “(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS,
5 AND SECURITIES.—Any certificate of deposit or
6 other obligation or security issued by a State bank
7 or a national bank after the effective date of the vol-
8 untary termination of the bank’s insured status
9 under this section shall be accompanied by a con-
10 spicuous, prominently displayed notice that such cer-
11 tificate of deposit or other obligation or security is
12 not insured under this Act.

13 “(h) NOTICE REQUIREMENTS.—

14 “(1) NOTICE TO THE CORPORATION.—The no-
15 tice required under subsection (a)(1)(A) shall be in
16 such form as the Corporation may require.

17 “(2) NOTICE TO DEPOSITORS.—The notice re-
18 quired under subsection (a)(1)(B) shall be—

19 “(A) sent to each depositor’s last address
20 of record with the bank; and

21 “(B) in such manner and form as the Cor-
22 poration finds to be necessary and appropriate
23 for the protection of depositors.”.

24 (3) DEFINITION.—Section 19(b)(1)(A)(i) of the
25 Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)) is

1 amended by inserting “, or any wholesale financial
2 institution subject to section 9B of this Act” after
3 “such Act”.

4 **Subtitle E—Streamlining Antitrust**
5 **Review of Bank Acquisitions**
6 **and Mergers**

7 **SEC. 141. AMENDMENTS TO THE BANK HOLDING COMPANY**
8 **ACT OF 1956.**

9 (a) AMENDMENTS TO SECTION 3 TO REQUIRE FIL-
10 ING OF APPLICATION COPIES WITH ANTITRUST AGEN-
11 CIES.—Section 3 of the Bank Holding Company Act of
12 1956 (12 U.S.C. 1842) is amended—

13 (1) in subsection (b) by inserting after para-
14 graph (2) the following new paragraph:

15 “(3) REQUIREMENT TO FILE INFORMATION
16 WITH ANTITRUST AGENCIES.—Any applicant seeking
17 prior approval of the Board to engage in an acquisi-
18 tion transaction under this section must file simulta-
19 neously with the Attorney General and, if the trans-
20 action also involves an acquisition under section 4 or
21 6, the Federal Trade Commission copies of any doc-
22 uments regarding the proposed transaction required
23 by the Board.”; and

24 (2) in subsection (c)—

25 (A) by striking paragraph (1); and

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1 (B) by redesignating paragraphs (2)
2 through (5) as paragraphs (1) through (4), re-
3 spectively.

4 (b) AMENDMENTS TO SECTION 11 TO MODIFY JUSTICE DEPARTMENT NOTIFICATION AND POST-APPROVAL
5 WAITING PERIOD FOR SECTION 3 TRANSACTIONS.—Sec-
6 tion 11 of the Bank Holding Company Act of 1956 (12
7 U.S.C. 1849) is amended—

8 (1) in subsection (b)(1)—

9 (A) by striking “, if the Board has not re-
10 ceived any adverse comment from the Attorney
11 General of the United States relating to com-
12 petitive factors,”;

13 (B) by striking “as may be prescribed by
14 the Board with the concurrence of the Attorney
15 General, but in no event less than 15 calendar
16 days after the date of approval.” and inserting
17 “as may be prescribed by the appropriate anti-
18 trust agency.”; and

19 (C) by striking the 3d to last sentence and
20 the penultimate sentence; and

21 (2) by striking subsections (c) and (e) and re-
22 designating subsections (d) and (f) as subsections
23 (c) and (d), respectively.
24

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1 (c) DEFINITIONS.—Section 2(o) of the Bank Holding
2 Company Act of 1956 (12 U.S.C. 1841(o)) is amended
3 by adding at the end the following new paragraphs:

4 “(8) ANTITRUST AGENCIES.—The term ‘anti-
5 trust agencies’ means the Attorney General and the
6 Federal Trade Commission.

7 “(9) APPROPRIATE ANTITRUST AGENCY.—With
8 respect to a particular transaction, the term ‘appro-
9 priate antitrust agency’ means the antitrust agency
10 engaged in reviewing the competitive effects of such
11 transaction.”.

12 **SEC. 142. AMENDMENTS TO THE FEDERAL DEPOSIT INSUR-**
13 **ANCE ACT TO VEST IN THE ATTORNEY GEN-**
14 **ERAL SOLE RESPONSIBILITY FOR ANTITRUST**
15 **REVIEW OF DEPOSITORY INSTITUTION MERG-**
16 **ERS.**

17 Section 18(c) of the Federal Deposit Insurance Act
18 (12 U.S.C. 1828) is amended—

19 (1) in paragraph (3)(C) by striking “during a
20 period at least as long as the period allowed for fur-
21 nishing reports under paragraph (4) of this sub-
22 section”;

23 (2) by striking paragraph (4) and inserting the
24 following new paragraph:

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1 “(4) FACTORS TO BE CONSIDERED.—In deter-
2 mining whether to approve a transaction, the re-
3 sponsible agency shall in every case take into consid-
4 eration the financial and managerial resources and
5 future prospects of the existing and proposed insti-
6 tutions, and the convenience and needs of the com-
7 munity to be served.”;

8 (3) by striking paragraph (5) and inserting the
9 following new paragraph:

10 “(5) NOTICE TO ATTORNEY GENERAL.—The re-
11 sponsible agency shall immediately notify the Attor-
12 ney General of any approval by it pursuant to this
13 subsection of a proposed merger transaction. If the
14 responsible agency has found that it must act imme-
15 diately in order to prevent the probable failure of
16 one of the banks involved, the transaction may be
17 consummated immediately upon approval by the
18 agency. If the responsible agency has notified the
19 other Federal banking agencies referred to in this
20 section of the existence of an emergency requiring
21 expeditious action and has required the submission
22 of views and recommendations within 10 days, the
23 transaction may not be consummated before the 5th
24 calendar day after the date of approval of the re-
25 sponsible agency. In all other cases, the transaction

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1 may not be consummated before the 30th calendar
2 day after the date of approval by the agency, or such
3 shorter period of time as may be prescribed by the
4 Attorney General.”;

5 (4) by striking paragraph (6) and redesignating
6 paragraphs (7) through (11) as paragraphs (6)
7 through (10), respectively;

8 (5) in subparagraph (A) of paragraph (6) (as
9 so redesignated by paragraph (4) of this section)—

10 (A) by striking “(5)” and inserting “(4)”;

11 and

12 (B) by striking “(6)” and inserting “(5)”;

13 (C) by striking “In any such action, the
14 court shall review de novo the issues pre-
15 sented.”;

16 (6) in paragraph (6) (as so redesignated by
17 paragraph (4) of this section)—

18 (A) by striking subparagraphs (B) and
19 (D); and

20 (B) by redesignating subparagraph (C) as
21 subparagraph (B);

22 (7) in paragraph (8) (as so redesignated by
23 paragraph (4) of this section)—

24 (A) by inserting “and” after the semicolon
25 at the end of subparagraph (A):

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1 (B) by striking subparagraph (B); and
2 (C) by redesignating subparagraph (C) as
3 subparagraph (B); and
4 (8) by inserting after paragraph (10) (as so re-
5 designated by paragraph (4) of this section) the fol-
6 lowing new paragraph:

7 “(11) REQUIREMENT TO FILE INFORMATION
8 WITH ATTORNEY GENERAL.—Any applicant seeking
9 prior written approval of the responsible Federal
10 banking agency to engage in a merger transaction
11 under this subsection shall file simultaneously with
12 the Attorney General copies of any documents re-
13 garding the proposed transaction required by the
14 Federal banking agency.”.

15 **SEC. 143. INFORMATION FILED BY DEPOSITORY INSTITU-**
16 **TIONS; INTERAGENCY DATA SHARING.**

17 (a) FORMAT OF NOTICE.—

18 (1) IN GENERAL.—Notice of any proposed
19 transaction for which approval is required under sec-
20 tion 3 of the Bank Holding Company Act of 1956
21 or section 18(c) of the Federal Deposit Insurance
22 Act shall be in a format designated and required by
23 the appropriate Federal banking agency (as defined
24 in section 3 of the Federal Deposit Insurance Act)

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1 and shall contain a section on the likely competitive
2 effects of the proposed transaction.

3 (2) DESIGNATION BY AGENCY.—The appro-
4 priate Federal banking agency, with the concurrence
5 of the antitrust agencies, shall designate and require
6 the form and content of the competitive effects sec-
7 tion.

8 (3) NOTICE OF SUSPENSION.—Upon notifica-
9 tion by the appropriate antitrust agency that the
10 competitive effects section of an application is in-
11 complete, the appropriate Federal banking agency
12 shall notify the applicant that the agency will sus-
13 pend processing of the application until the appro-
14 priate antitrust agency notifies the agency that the
15 application is complete.

16 (4) EMERGENCY ACTION.—This provision shall
17 not affect the appropriate Federal banking agency's
18 authority to act immediately—

19 (A) to prevent the probable failure of 1 of
20 the banks involved; or

21 (B) to reduce or eliminate a post approval
22 waiting period in case of an emergency requir-
23 ing expeditious action.

24 (5) EXEMPTION FOR CERTAIN FILINGS.—With
25 the concurrence of the antitrust agencies, the appro-

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1 prate Federal banking agency may exempt classes
2 of persons, acquisitions, or transactions that are not
3 likely to violate the antitrust laws from the require-
4 ment that applicants file a competitive effects sec-
5 tion.

6 (b) INTERAGENCY DATA SHARING REQUIREMENT.—

7 (1) IN GENERAL.—To the extent not prohibited
8 by other law, the Federal banking agencies shall
9 make available to the antitrust agencies any data in
10 their possession that the antitrust agencies deem
11 necessary for antitrust reviews of transactions re-
12 quiring approval under section 3 of the Bank Hold-
13 ing Company Act of 1956 or section 18(c) of the
14 Federal Deposit Insurance Act.

15 (2) CONTINUATION OF DATA COLLECTION AND
16 ANALYSIS.—The Federal banking agencies shall con-
17 tinue to provide market analysis, deposit share infor-
18 mation, and other relevant information for determin-
19 ing market competition as needed by the Attorney
20 General in the same manner such agencies provided
21 analysis and information under section 18(c) of the
22 Federal Deposit Insurance Act and 3(c) of the Bank
23 Holding Company Act of 1956 (as such sections
24 were in effect on the day before the date of the en-

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1 actment of this Act) and shall continue to collect in-
2 formation necessary or useful for such analysis.

3 (c) DEFINITIONS.—For purposes of this section, the
4 following definitions shall apply:

5 (1) ANTITRUST AGENCIES.—The term “anti-
6 trust agencies” means the Attorney General and the
7 Federal Trade Commission.

8 (2) APPROPRIATE ANTITRUST AGENCY.—With
9 respect to a particular transaction, the term “appro-
10 priate antitrust agency” means the antitrust agency
11 engaged in reviewing the competitive effects of such
12 transaction.

13 **SEC. 144. APPLICABILITY OF ANTITRUST LAWS.**

14 No provision of this subtitle shall be construed as af-
15 fecting—

16 (1) the applicability of antitrust laws (as de-
17 fined in section 11(d) of the Bank Holding Company
18 Act of 1956; as so redesignated pursuant to this
19 subtitle); or

20 (2) the applicability, if any, of any State law
21 which is similar to the antitrust laws.

22 **SEC. 145. CLARIFICATION OF STATUS OF SUBSIDIARIES**
23 **AND AFFILIATES.**

24 (a) CLARIFICATION OF FEDERAL TRADE COMMIS-
25 SION JURISDICTION.—Any person which directly or indi-

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1 rectly controls, is controlled directly or indirectly by, or
2 is directly or indirectly under common control with, any
3 bank or savings association (as such terms are defined in
4 section 3 of the Federal Deposit Insurance Act) and is
5 not itself a bank or savings association shall not be
6 deemed to be a bank or savings association for purposes
7 of the Federal Trade Commission Act or any other law
8 enforced by the Federal Trade Commission.

9 (b) SAVINGS PROVISION.—No provision of this sec-
10 tion shall be construed as restricting the authority of any
11 Federal banking agency (as defined in section 3 of the
12 Federal Deposit Insurance Act) under any Federal bank-
13 ing law, including section 8 of the Federal Deposit Insur-
14 ance Act.

15 **SEC. 146. EFFECTIVE DATE.**

16 This subtitle shall take effect 6 months after the date
17 of enactment of this Act.

1 **Subtitle F—Applying the Principles**
2 **of National Treatment and**
3 **Equality of Competitive Oppor-**
4 **tunity to Foreign Banks and**
5 **Foreign Financial Institutions**

6 **SEC. 151. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
7 **MENT AND EQUALITY OF COMPETITIVE OP-**
8 **PORTUNITY TO FOREIGN BANKS THAT ARE**
9 **FINANCIAL HOLDING COMPANIES.**

10 Section 8(c) of the International Banking Act of
11 1978 (12 U.S.C. 3106(c)) is amended by adding at the
12 end the following new paragraph:

13 “(3) TERMINATION OF GRANDFATHERED
14 RIGHTS.—

15 “(A) IN GENERAL.—If any foreign bank or
16 foreign company files a declaration under sec-
17 tion 6(b)(1)(E) or which receives a determina-
18 tion under section 10(d)(1) of the Bank Hold-
19 ing Company Act of 1956, any authority con-
20 ferred by this subsection on any foreign bank or
21 company to engage in any activity which the
22 Board has determined to be permissible for fi-
23 nancial holding companies under section 6 of
24 such Act shall terminate immediately.

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1 “(B) RESTRICTIONS AND REQUIREMENTS
2 AUTHORIZED.—If a foreign bank or company
3 that engages, directly or through an affiliate
4 pursuant to paragraph (1), in an activity which
5 the Board has determined to be permissible for
6 financial holding companies under section 6 of
7 the Bank Holding Company Act of 1956 has
8 not filed a declaration with the Board of its sta-
9 tus as a financial holding company under such
10 section or received a determination under sec-
11 tion 10(d)(1) by the end of the 2-year period
12 beginning on the date of enactment of the Fi-
13 nancial Services Act of 1998, the Board, giving
14 due regard to the principle of national treat-
15 ment and equality of competitive opportunity,
16 may impose such restrictions and requirements
17 on the conduct of such activities by such foreign
18 bank or company as are comparable to those
19 imposed on a financial holding company orga-
20 nized under the laws of the United States, in-
21 cluding a requirement to conduct such activities
22 in compliance with any prudential safeguards
23 established under section 5(h) of the Bank
24 Holding Company Act of 1956.”.

1 **SEC. 152. APPLYING THE PRINCIPLES OF NATIONAL TREAT-**
2 **MENT AND EQUALITY OF COMPETITIVE OP-**
3 **PORTUNITY TO FOREIGN BANKS AND FOR-**
4 **EIGN FINANCIAL INSTITUTIONS THAT ARE**
5 **WHOLESALE FINANCIAL INSTITUTIONS.**

6 Section 8A of the Federal Deposit Insurance Act (as
7 added by section 136(c)(2) of this Act) is amended by add-
8 ing at the end the following new subsection:

9 “(i) VOLUNTARY TERMINATION OF DEPOSIT INSUR-
10 ANCE.—The provisions on voluntary termination of insur-
11 ance in this section shall apply to an insured branch of
12 a foreign bank (including a Federal branch) in the same
13 manner and to the same extent as they apply to an insured
14 State bank or a national bank.”.

15 **Subtitle G—Federal Home Loan**
16 **Bank System**

17 **SEC. 161. FEDERAL HOME LOAN BANKS**

18 The 1st sentence of section 3 of the Federal Home
19 Loan Bank Act (12 U.S.C. 1423) is amended—

20 (1) by striking “the continental United States”
21 and all that follows through the “eight”; and

22 (2) by inserting “the States into not less than
23 1” before “nor”.

24 **SEC. 162. MEMBERSHIP AND COLLATERAL.**

25 (a) Subsection (f) of section 5 of the Home Owners’
26 Loan Act (12 U.S.C. 1464) is amended to read as follows:

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1 “(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—
2 A Federal savings association may become a member, of
3 the Federal Home Loan Bank System, and shall qualify
4 for such membership in the manner provided by the Fed-
5 eral Home Loan Bank Act, beginning January 1, 1999.”.

6 (b) Section 10(a)(5) of the Federal Home Loan Bank
7 Act (12 U.S.C. 1430(a)(5)) is amended—

8 (1) in the 2d sentence, by striking “and the
9 Board”; and

10 (2) in the 3d sentence, by striking “Board” and
11 inserting “Bank”.

12 (c) Section 10(a) of the Federal Home Loan Bank
13 Act (12 U.S.C. 1430(a)) is amended—

14 (1) in the 2d sentence, by striking “All long-
15 term advances” and inserting “Except as provided
16 in the succeeding sentence, all long-term advances”;

17 (2) by inserting after the 2d sentence, the fol-
18 lowing sentence: “Notwithstanding the preceding
19 sentence, long-term advances may be made to mem-
20 bers insured by the Federal Deposit Insurance Cor-
21 poration which have less than \$500,000,000 in total
22 assets for the purpose of funding small businesses,
23 agriculture, rural development, or low-income com-
24 munity development (as defined by the Board).”;
25 and

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1 (3) by redesignating paragraph (5) as para-
2 graph (6) and inserting after paragraph (4) the fol-
3 lowing new paragraph:

4 “(5) In the case of any member insured by the
5 Federal Deposit Insurance Corporation which has
6 total assets of less than \$500,000,000, secured loans
7 for small business, agriculture, rural development, or
8 low-income community development, or securities
9 representing a whole interest in such secured
10 loans.”.

11 (d) Section 4(a) of the Federal Home Loan Bank Act
12 (12 U.S.C. 1424(a)) is amended by adding at the end the
13 following new paragraph:

14 “(3) ELIGIBILITY REQUIREMENTS FOR COMMU-
15 NITY FINANCIAL INSTITUTIONS.—The requirements
16 of paragraph (2) (other than subparagraph (B) of
17 such paragraph) shall not apply to any insured de-
18 pository institution which has total assets of less
19 than \$500,000,000.

20 (e) Section 10 of the Federal Home Loan Bank Act
21 (12 U.S.C. 1430) is amended by striking the 1st of the
22 2 subsections designated as subsection (e) (relating to
23 qualified thrift lender status).

1 **SEC. 163. THE OFFICE OF FINANCE.**

2 The Federal Home Loan Bank Act (12 U.S.C. 1421)
3 is amended by inserting after section 4 the following new
4 section:

5 **“SEC. 5. THE OFFICE OF FINANCE.**

6 “(a) OPERATION.—The Federal home loan banks
7 shall operate jointly an office of finance (hereafter in this
8 section referred to as the ‘Office’) to issue the notes,
9 bonds, and debentures of the Federal home loan banks
10 in accordance with this Act.

11 “(b) POWERS.—Subject to the other provisions of
12 this Act and such safety and soundness regulations as the
13 Finance Board may prescribe, the Office shall be author-
14 ized by the Federal home loan banks to act as the agent
15 of such banks to issue Federal home loan bank notes,
16 bonds and debentures pursuant to section 11 of this Act
17 on behalf of the banks.

18 “(c) CENTRAL BOARD OF DIRECTORS.—

19 “(1) ESTABLISHMENT.—The Federal home
20 loan banks shall establish a central board of direc-
21 tors of the Office to administer the affairs of the Of-
22 fice in accordance with the provisions of this Act.

23 “(2) COMPOSITION OF BOARD.—Each Federal
24 home loan bank shall annually select 1 individual
25 who, as of the time of the election, is an officer or

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1 director of such bank to serve as a member of the
2 central board of directors of the Office.

3 “(d) STATUS.—Except to the extent expressly pro-
4 vided in this Act, the Office shall be treated as a Federal
5 home loan bank for purposes of any law.”.

6 **SEC. 164. MANAGEMENT OF BANKS.**

7 (a) Subsections (a) and (b) of section 7 of the Federal
8 Home Loan Bank Act (12 U.S.C. 1427(a) and (b)) are
9 amended to read as follows:

10 “(a) The management of each Federal home loan
11 bank shall be vested in a board of 15 directors, 9 of whom
12 shall be elected by the members in accordance with this
13 section, 6 of whom shall be appointed by the Board re-
14 ferred to in section 2A, and all of whom shall be citizens
15 of the United States and bona fide residents of the district
16 in which such bank is located. At least 2 of the Federal
17 home loan bank directors who are appointed by the Board
18 shall be representatives chosen from organizations with
19 more than a 2-year history of representing consumer or
20 community interests on banking services, credit needs,
21 housing, or financial consumer protections. No Federal
22 home loan bank director who is appointed pursuant to this
23 subsection may, during such bank director’s term of office,
24 serve as an officer of any Federal home loan bank or a
25 director or officer of any member of a bank, or hold

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1 shares, or any other financial interest in, any member of
2 a bank.

3 “(b) The elective directors shall be divided into three
4 classes, designated as classes A, B, and C, as nearly equal
5 in number as possible. Each directorship shall be filled by
6 a person who is an officer or director of a member located
7 in that bank’s district. Each class shall represent members
8 of similar asset size, and the Board shall, to the maximum
9 extent possible, seek to achieve geographic diversity. The
10 Finance Board shall establish the minimum and maximum
11 asset size for each class. Any member shall be entitled to
12 nominate and elect eligible persons for its class of director-
13 ship; such offices shall be filled from such nominees by
14 a plurality of the votes which members of each class may
15 cast for nominees in their corresponding class of directors
16 in an election held for the purpose of filling such offices.
17 Each member shall be permitted to cast one vote for each
18 share of Federal home loan bank stock owned by that
19 member. No person who is an officer or director of a mem-
20 ber that fails to meet any applicable capital requirement
21 is eligible to hold the office of Federal Home Loan Bank
22 director. As used in this subsection, the term “member”
23 means a member of a Federal home loan bank which was
24 a member of such Bank as of a record date established
25 by the Bank.”.

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1 (b) Section 7 of the Federal Home Loan Bank Act
2 (12 U.S.C. 1427) is amended—

3 (1) by striking subsections (c) and (h); and

4 (2) by redesignating subsections (d), (e), (f),
5 (g), (i), (j), and (k) as subsections (c), (d), (e), (f),
6 (g), (h), and (i), respectively.

7 (c) Subsection (c) of section 7 of the Federal Home
8 Loan Bank Act (12 U.S.C. 1427(d)) (as so redesignated
9 by subsection (b) of this section) is amended by striking
10 the 1st and 2d sentences and inserting the following 2 new
11 sentences: “The term of each position of director shall be
12 3 years. No director serving for 3 consecutive terms, nor
13 any other officer, director or that member or any affiliated
14 depository institution, shall be eligible for another term
15 earlier than 3 years after the expiration of the last expir-
16 ing of said 3-year terms. 3 elected directors of different
17 classes as specified by the Finance Board shall be elected
18 by ballot annually.”.

19 (d) Subsection (d) of section 7 of the Federal Home
20 Loan Bank Act (12 U.S.C. 1427(e)) (as so redesignated
21 by subsection (b) of this section) is amended to read as
22 follows:

23 “(d) TRANSITION PROVISION.—In the 1st election
24 after the date of the enactment of the Financial Services
25 Act of 1998, 3 directors shall be elected in each of the

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1 3 classes of elective directorship. The Finance Board may,
2 in the 1st election after such date of enactment, designate
3 the terms of each elected director in each class, not to
4 exceed 3 years, to assure that, in each subsequent election,
5 3 directors from different classes of elective directorships
6 are elected each year.”.

7 (e) Subsection (g) of section 7 of the Federal Home
8 Loan Bank Act (12 U.S.C. 1427(i)) (as so redesignated
9 by subsection (b) of this section) is amended by striking
10 “subject to the approval of the board”.

11 **SEC. 165. ADVANCES TO NONMEMBER BORROWERS.**

12 Section 10b of the Federal Home Loan Bank Act (12
13 U.S.C. 1430b) is amended—

14 (1) in subsection (a), by striking “(a) IN GEN-
15 ERAL.—”;

16 (2) by striking the 4th sentence of subsection
17 (a), and inserting “Notwithstanding the preceding
18 sentence, if an advance is made for the purpose of
19 facilitating mortgage lending that benefits individ-
20 uals and families that meet the income requirements
21 set forth in section 142(d) or 143(f) of the Internal
22 Revenue Code of 1986, the advance may be
23 collateralized as provided in section 10(a) of this
24 Act.”; and

25 (3) by striking subsection (b).

1 **SEC. 166. POWERS AND DUTIES OF BANKS.**

2 (a) Subsection (a) of section 11 of the Federal Home
3 Loan Bank Act (12 U.S.C. 1431(a)) is amended—

4 (1) by inserting “through the Office of Fi-
5 nance” after “to issue”;

6 (2) by striking “Board” after “upon such terms
7 and conditions as the” and inserting “board of di-
8 rectors of the bank”.

9 (b) Subsection (b) of section 11 of the Federal Home
10 Loan Bank Act (12 U.S.C. 1431(b)) is amended to read
11 as follows:

12 “(b) ISSUANCE OF FEDERAL HOME LOAN BANK
13 CONSOLIDATED BONDS.—

14 “(1) IN GENERAL.— The Office of Finance may
15 issue consolidated Federal home loan bank bonds
16 and other consolidated obligations on behalf of the
17 banks.

18 “(2) JOINT AND SEVERAL OBLIGATION; TERMS
19 AND CONDITIONS.—Consolidated obligations issued
20 by the Office of Finance under paragraph (1)
21 shall—

22 “(A) be the joint and several obligations of
23 all the Federal home loan banks; and

24 “(B) shall be issued upon such terms and
25 conditions as shall be established by the Office

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1 of Finance subject to such rules and regulations
2 as the Finance Board may prescribe.”.

3 (c) Section 11(f) of the Federal Home Loan Bank
4 Act (12 U.S.C. 1430(f) (as designated before the redesignation by subsection (e) of this section) is amended by
5 striking both commas immediately following “permit” and
6 inserting “or”.

8 (d) Subsection (i) of section 11 of the Federal Home
9 Loan Bank Act (12 U.S.C. 1431(i)) is amended by striking
10 the 2d undesignated paragraph.

11 (e) Section 11 of the Federal Home Loan Bank Act
12 (12 U.S.C. 1431) is amended—

13 (1) by striking subsection (c); and

14 (2) by redesignating subsections (d) through (k)

15 as subsections (c) through (j), respectively.

16 **SEC. 167. MERGERS AND CONSOLIDATIONS OF FEDERAL**
17 **HOME LOAN BANKS.**

18 Section 26 of the Federal Home Loan Bank Act (12
19 U.S.C. 1446) is amended by designating the current paragraph as “(a)” and adding the following new sections:

21 “(b) Nothing in this section shall preclude voluntary
22 mergers, combinations or consolidation by or among the
23 Federal home loan banks pursuant to such regulations as
24 the Finance Board may prescribe.

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1 “(c) NUMBER OF ELECTED DIRECTORS OF RESULT-
2 ING BANK.— Subject to section 7 of this Act, any bank
3 resulting from a merger, combination, or consolidation
4 pursuant to this section may have a number of elected di-
5 rectors equal to or less than the total number of elected
6 directors of all the banks which participated in such trans-
7 action (as determined immediately before such trans-
8 action).

9 “(d) NUMBER OF APPOINTED DIRECTORS OF RE-
10 SULTING BANK.—The number of appointed directors of
11 any bank resulting from a merger, combination, or consoli-
12 dation pursuant to this section shall be a number that is
13 three less than the number of elected directors.

14 “(e) ADJUSTMENT OF DISTRICT BOUNDARIES.—
15 After consummation of any merger, combination, or con-
16 solidation of 2 or more Federal home loan banks, the Fi-
17 nance Board shall adjust the districts established in sec-
18 tion 3 of this Act to reflect such merger, combination, or
19 consolidation.”.

20 **SEC. 168. TECHNICAL AMENDMENTS.**

21 (a) REPEAL OF SECTIONS 22A AND 27.—The Fed-
22 eral Home Loan Bank Act (12 U.S.C. 1421 et seq.) is
23 amended by striking sections 22A (12 U.S.C. 1442a) and
24 27 (12 U.S.C. 1447).

25 (b) SECTION 12.—

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1 (1) Section 12(a) of the Federal Home Loan
2 Bank Act (12 U.S.C. 1432(a)) is amended—

3 (A) by striking “subject to the approval of
4 the Board” immediately following “transaction
5 of its business”; and

6 (B) by striking “and, by its Board of di-
7 rectors, to prescribe, amend, and repeal by-
8 laws, rules, and regulations governing the man-
9 ner in which its affairs may be administered;
10 and the powers granted to it by law may be ex-
11 ercised and enjoyed subject to the approval of
12 the Board. The president of a Federal Home
13 Loan Bank may also be a member of the Board
14 of directors thereof, but no other officer, em-
15 ployee, attorney, or agent of such bank,” and
16 inserting “and, by the board of directors of the
17 bank, to prescribe, amend, and repeal by-laws
18 governing the manner in which its affairs may
19 be administered, consistent with applicable stat-
20 ute and regulation, as administered by the Fi-
21 nance Board. No officer, employee, attorney, or
22 agent of a Federal home loan bank”.

23 (2) Section 12 of the Federal Home Loan Bank
24 Act (12 U.S.C. 1432) is amended by inserting after
25 subsection (b) the following new subsection:

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1 “(c) PROHIBITION ON EXCESSIVE COMPENSATION.—

2 “(1) IN GENERAL.—The Finance Board shall
3 prohibit the Federal home loan banks from provid-
4 ing compensation to any officer, director, or em-
5 ployee that is not reasonable and comparable with
6 the compensation for employment in other similar
7 businesses involving similar duties and responsibil-
8 ities. However, the Finance Board may not prescribe
9 or set a specific level or range of compensation for
10 any officer, director, or employee.

11 “(2) REGULATIONS.—The Finance Board, by
12 regulation, may provide for the requirements of
13 paragraph (1) to be phased-in over a period not to
14 exceed 3 years.

15 “(3) EXCEPTION FOR EXISTING CONTRACTS.—
16 Paragraph (1) shall not apply to any contract en-
17 tered into before June 1, 1997.”.

18 (c) POWERS AND DUTIES OF FEDERAL HOUSING FI-
19 NANCE BOARD.—

20 (1) Subsection (a)(1) of section 2B of the Fed-
21 eral Home Loan Bank Act (12 U.S.C. 1422b(a)(1))
22 is amended by striking the period at the end of the
23 sentence and inserting “; and to have the same pow-
24 ers, rights, and duties to enforce this Act with re-
25 spect to the Federal home loan banks and the senior

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1 officers and directors of such banks as the Office of
2 Federal Housing Enterprise Oversight has over the
3 Federal housing enterprises and the senior officers
4 and directors of such enterprises under the Federal
5 Housing Enterprises Financial Safety and Sound-
6 ness Act of 1992.”.

7 (2) Subsection (b) of section 2B of the Federal
8 Home Loan Bank Act (12 U.S.C. 1422b(b)) is
9 amended—

10 (A) by striking “(1) BOARD STAFF.—”;

11 (B) by striking “function to any employee,
12 administrative unit” and inserting “function to
13 any employee or administrative unit”;

14 (C) by striking the 2d sentence in para-
15 graph (1); and

16 (D) by striking paragraph (2).

17 (3) Section 111 of Public Law 93-495 (12
18 U.S.C. 250) is amended by striking “Federal Home
19 Loan Bank Board” and inserting “Federal Housing
20 Finance Board”.

21 (d) ELIGIBILITY TO SECURE ADVANCES.—

22 (1) SECTION 9.—Section 9 of the Federal
23 Home Loan Bank Act (12 U.S.C. 1429) is amend-
24 ed—

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1 (A) in the second sentence, by striking
2 “with the approval of the Board”; and

3 (B) in the third sentence, by striking “,
4 subject to the approval of the Board,”.

5 (2) SECTION 10.—

6 (A) Subsection (a) of section 10 of the
7 Federal Home Loan Bank Act (12 U.S.C.
8 1430(a)) is amended in paragraph (3), by strik-
9 ing “Deposits” and inserting “Cash or depos-
10 its”.

11 (B) Subsection (c) of section 10 of the
12 Federal Home Loan Bank Act (12 U.S.C.
13 1430(c)) is amended—

14 (i) in the 1st sentence by striking
15 “Board” and inserting “Federal home loan
16 bank”; and

17 (ii) by striking the 2d sentence.

18 (C) Subsection (d) of section 10 of the
19 Federal Home Loan Bank Act (12 U.S.C.
20 1430(d)) is amended—

21 (i) in the 1st sentence, by striking
22 “and the approval of the Board”;

23 (ii) in the last sentence, by striking
24 “Subject to the approval of the Board,
25 any” and inserting “Any”.

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1 (D) Section 10(j) of the Federal Home
2 Loan Bank Act (12 U.S.C. 1430(j)) is amend-
3 ed—

4 (i) in the 1st sentence of paragraph
5 (1) by striking “to subsidize the interest
6 rate on advances” and inserting “to pro-
7 vide subsidies, including subsidized interest
8 rates on advances”;

9 (ii) in paragraphs (2), (3), (4), (5),
10 (9), (11), and (12) by striking “advances”
11 and “subsidized advances” each place such
12 terms appear and inserting “subsidies, in-
13 cluding subsidized advances”;

14 (iii) in paragraph (1), by inserting
15 “(A)” before the 1st sentence, and insert-
16 ing the following at the end of the para-
17 graph:

18 “(B) Subject to such regulations as the Fi-
19 nance Board may prescribe, the board of direc-
20 tors of each Federal home loan bank may ap-
21 prove or disapprove requests from members for
22 Affordable Housing Program subsidies, and
23 may not delegate such authority.”;

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1 (iv) in paragraph (2), by striking sub-
2 paragraph (B) and inserting the following
3 new subparagraph:

4 “(B) finance the purchase, construction or
5 rehabilitation of rental housing if, for a period
6 of at least 15 years, either 20 percent or more
7 of the units in such housing are occupied by
8 and affordable for households whose income is
9 50 percent or less of area median income (as
10 determined by the Secretary of Housing and
11 Urban Development, and as adjusted for family
12 size); or 40 percent or more of the units in such
13 housing are occupied by and affordable for
14 households whose income is 60 percent or less
15 of area median income (as determined by the
16 Secretary of Housing and Urban Development,
17 and as adjusted for family size).”;

18 (v) in paragraph (5)—

19 (I) by striking the colon after
20 “Affordable Housing Program”;

21 (II) by striking subparagraphs
22 (A) and (B); and

23 (III) by striking “(C) In 1995,
24 and subsequent years.”;

25 (vi) in paragraph (11)—

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1 (I) by inserting “, pursuant to a
2 nomination process that is as broad
3 and as participatory as possible, and
4 giving consideration to the size of the
5 District and the diversity of low- and
6 moderate-income housing needs and
7 activities within the District,” after
8 “Advisory Council of 7 to 15 per-
9 sons”;

10 (II) by inserting “a diverse range
11 of” before “community and nonprofit
12 organizations”; and

13 (III) by inserting after the 1st
14 sentence, the following new sentence:
15 “Representatives of no one group
16 shall constitute an undue proportion
17 of the membership of the Advisory
18 Council.”; and

19 (vii) in paragraph (13), by striking
20 subparagraph (D) and inserting the follow-
21 ing new subparagraph:

22 “(D) AFFORDABLE.—For purposes of
23 paragraph (2)(B), the term “affordable” means
24 that the rent with respect to a unit shall not ex-
25 ceed 30 percent of the income limitation under

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1 paragraph (2)(B) applicable to occupants of
2 such unit.”.

3 (e) SECTION 16.—Subsection (a) of section 16 of the
4 Federal Home Loan Bank Act (12 U.S.C. 1436) is
5 amended in the 3d sentence by striking “net earnings”
6 and inserting “previously retained earnings or current net
7 earnings”; by striking “, and then only with the approval
8 of the Federal Housing Finance Board”; and by striking
9 the 4th sentence.

10 (f) SECTION 18.—Subsection (b) of section 18 of the
11 Federal Home Loan Bank Act (12 U.S.C. 1438) is
12 amended by striking paragraph (4).

13 (g) SECTION 11.—Section 11 of the Federal Home
14 Loan Bank Act (12 U.S.C. 1431) is amended by inserting
15 after subsection (j) (as so redesignated by section 166(e)
16 of this subtitle) the following subsection:

17 “(k) PROHIBITION ON OTHER ACTIVITIES.—

18 “(1) A Federal home loan bank may not engage
19 in any activity other than the activities authorized
20 under this Act and activities incidental to such au-
21 thorized activities.

22 “(2) All activities specified in paragraph (1) are
23 subject to Finance Board approval.”.

1 **SEC. 169. DEFINITIONS.**

2 Paragraph (3) of section 2 of the Federal Home Loan
3 Bank Act (12 U.S.C. 1422(3)) is amended to read as fol-
4 lows:

5 “(3) The term “State” in addition to the states
6 of the United States, includes the District of Colum-
7 bia, Guam, Puerto Rico, the United States Virgin
8 Islands, American Samoa, and the Commonwealth of
9 the Northern Mariana Islands.”

10 **SEC. 170. RESOLUTION FUNDING CORPORATION**

11 (a) IN GENERAL.—Section 21B(f)(2)(C) of the Fed-
12 eral Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(C)) is
13 amended to read as follows:

14 “(C) PAYMENTS BY FEDERAL HOME LOAN
15 BANKS.—To the extent the amounts available
16 pursuant to subparagraphs (A) and (B) are in-
17 sufficient to cover the amount of interest pay-
18 ments, each Federal home loan bank shall pay
19 to the Funding Corporation each calendar year
20 20.75 percent of the net earnings of such bank
21 (after deducting expenses relating to subsection
22 (j) of section 10 and operating expenses).”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on January 1, 1999.

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1 **SEC. 171. CAPITAL STRUCTURE OF THE FEDERAL HOME**2 **LOAN BANKS.**

3 (a) IN GENERAL.—Section 6 of the Federal Home
4 Loan Bank Act (12 U.S.C. 1426) is amended to read as
5 follows:

6 **“SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN**
7 **BANKS.**

8 “(a) CAPITAL STRUCTURE PLAN.—On or before Jan-
9 uary 1, 1999, the board of directors of each Federal home
10 loan bank shall submit for Finance Board approval a plan
11 establishing and implementing a capital structure for such
12 bank which—

13 “(1) the board of directors determines is the
14 best suited for the condition and operation of the
15 bank and the interests of the shareholders of the
16 bank;

17 “(2) meets the requirements of subsection (b);
18 and

19 “(3) meets the minimum capital standards and
20 requirements established under subsection (c) and
21 any regulations prescribed by the Finance Board
22 pursuant to such subsection.

23 “(b) CONTENTS OF PLAN.—The capital structure
24 plan of each Federal home loan bank shall meet the follow-
25 ing requirements:

26 “(1) STOCK PURCHASE REQUIREMENTS.—

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1 “(A) IN GENERAL.—Each capital structure
2 plan of a Federal home loan bank shall require
3 the shareholders of the bank to maintain an in-
4 vestment in the stock of the bank in amount
5 not less than—

6 “(i) a minimum percentage of the
7 total assets of the shareholder; and

8 “(ii) a minimum percentage of the
9 outstanding advances from the bank to the
10 shareholder.

11 “(B) MINIMUM PERCENTAGE LEVELS.—
12 The minimum percentages established pursuant
13 to subparagraph (A) shall be set at levels suffi-
14 cient to meet the bank’s minimum capital re-
15 quirements established by the Finance Board
16 under subsection (c).

17 “(C) MAXIMUM ASSET BASED CAPITAL RE-
18 QUIREMENT.—The asset-based capital require-
19 ment applicable to any shareholder of a Federal
20 home loan bank in any year shall not exceed the
21 lesser of—

22 “(i) 0.6 percent of a shareholder’s
23 total assets at the close of the preceding
24 year; or

25 “(ii) \$300,000,000.

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1 “(D) MAXIMUM ADVANCE-BASED REQUIRE-
2 MENT.—The advance-based capital requirement
3 applicable to any shareholder of a Federal home
4 loan bank shall not exceed 6 percent of the
5 total outstanding advances from the bank to the
6 shareholder.

7 “(E) MINIMUM STOCK PURCHASE RE-
8 QUIREMENT AUTHORIZED.—A capital structure
9 plan may establish a minimum dollar amount of
10 stock of a Federal home loan bank in which a
11 shareholder shall be required to invest.

12 “(2) ADJUSTMENTS TO STOCK PURCHASE RE-
13 QUIREMENTS.—The capital structure plan adopted
14 by each Federal home loan bank shall impose a con-
15 tinuing obligation on the board of directors of the
16 bank to review and adjust as necessary member
17 stock purchase requirements in order to ensure that
18 the bank remains in compliance with applicable min-
19 imum capital levels established by the Finance
20 Board.

21 “(3) TRANSITION RULE FOR STOCK PURCHASE
22 REQUIREMENTS.—

23 “(A) IN GENERAL.—A capital structure
24 plan may allow shareholders who were members
25 of a Federal home loan bank on the date of the

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1 enactment of the Financial Services Act of
2 1998 to come into compliance with the asset-
3 based stock purchase requirement established
4 under paragraph (1) during a transition period
5 established under the plan of not more than 3
6 years, if such requirement exceeds the asset-
7 based stock purchase requirement in effect on
8 such date of enactment.

9 “(B) INTERIM PURCHASE REQUIRE-
10 MENTS.—A capital structure plan may establish
11 interim asset-based stock purchase require-
12 ments applicable to members referred to in sub-
13 paragraph (A) during a transition period estab-
14 lished under subparagraph (A).

15 “(4) CLASSES OF STOCK.—

16 “(A) IN GENERAL.—Each capital structure
17 plan shall afford each shareholder of a Federal
18 home loan bank the option of meeting the
19 shareholder’s stock purchase requirements
20 through the purchase of any combination of
21 Class A or Class B stock.

22 “(B) CLASS A STOCK.—Class A stock shall
23 be stock of a Federal home loan bank that shall
24 be redeemed in cash and at par by the bank no
25 later than 12 months following submission of a

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1 written notice by a shareholder of the share-
2 holder's intention to divest all shares of stock in
3 the bank.

4 “(C) CLASS B STOCK.—Class B stock shall
5 be stock of a Federal home loan bank that shall
6 be redeemed in cash and at par by the bank no
7 later than 5 years following submission of a
8 written notice by a shareholder of the share-
9 holder's intention to divest all shares of stock in
10 the bank.

11 “(D) RIGHTS REQUIREMENT.—The Class
12 B stock of a Federal home loan bank may re-
13 ceive a dividend premium over that paid on
14 Class A stock, and may have preferential voting
15 rights in the election of Federal home loan bank
16 directors.

17 “(E) LOWER STOCK PURCHASE REQUIRE-
18 MENTS FOR CLASS B STOCK.—A capital struc-
19 ture plan may provide for lower stock purchase
20 requirements with respect to those sharehold-
21 er's that elect to purchase Class B stock in a
22 manner that is consistent with meeting the
23 bank's own minimum capital requirements as
24 established by the Finance Board.

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1 “(F) NO OTHER CLASSES OF STOCK PER-
2 MITTED.—No class of stock other than the
3 Class A and Class B stock described in sub-
4 paragraphs (B) and (C) may be issued by a
5 Federal home loan bank.

6 “(5) LIMITED TRANSFERABILITY OF STOCK.—
7 Each capital structure plan shall provide that any
8 equity securities issued by the bank shall be avail-
9 able only to, held only by, and tradable only among
10 shareholders of the bank.

11 “(c) CAPITAL STANDARDS.—

12 “(1) IN GENERAL.—The Finance Board shall
13 prescribe, by regulation, uniform capital standards
14 applicable to each Federal home loan bank which
15 shall include—

16 “(A) a leverage limit in accordance with
17 paragraph (2); and

18 “(B) a risk-based capital requirement in
19 accordance with paragraph (3).

20 “(2) MINIMUM LEVERAGE LIMIT.—The leverage
21 limit established by the Finance Board shall require
22 each Federal home loan bank to maintain total cap-
23 ital in an amount not less than 5 percent of the total
24 assets of the bank. In determining compliance with
25 the minimum leverage ratio, the amount of retained

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1 earnings and the paid-in value of Class B stock, if
2 any, shall be multiplied by 1.5 and such higher
3 amount shall be deemed to be capital for purposes
4 of meeting the 5 percent minimum leverage ratio.

5 “(3) RISK-BASED CAPITAL STANDARD.—The
6 risk-based capital requirement shall be composed of
7 the following components:

8 “(A) Capital sufficient to meet the credit
9 risk to which a Federal home loan bank is sub-
10 ject, based on an amount which is not less than
11 the amount of tier 1, risk-based capital required
12 by regulations prescribed, or guidelines issued
13 under section 38 of the Federal Deposit Insur-
14 ance Act for a well capitalized insured deposi-
15 tory institution.

16 “(B) Capital sufficient to meet the interest
17 rate risk to which a Federal home loan bank is
18 subject, based on an interest rate stress test ap-
19 plied by the Finance Board that rigorously tests
20 for changes in interest rates, rate volatility, and
21 changes in the shape of the yield curve.

22 “(d) REDEMPTION OF CAPITAL.—

23 “(1) IN GENERAL.—Any shareholder of a Fed-
24 eral home loan bank shall have the right to withdraw
25 the shareholder’s membership from a Federal home

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1 loan bank and to redeem the shareholder's stock in
2 accordance with the redemption rights associated
3 with the class of stock the shareholder holds, if—

4 “(A) such shareholder has filed a written
5 notice of an intention to redeem all such shares;
6 and

7 “(B) the shareholder has no outstanding
8 advances from any Federal home loan bank at
9 the time of such redemption.

10 “(2) PARTIAL REDEMPTION.—A shareholder
11 who files notice of intention to redeem all shares of
12 stock in a Federal home loan bank may redeem not
13 more than 1/2 of all such shares, in cash and at par,
14 6 months before the date by which the bank is re-
15 quired to redeem such stock pursuant to subpara-
16 graph (B) or (C) of subsection (b)(4).

17 “(3) DIVESTITURE.—The board of directors of
18 any Federal home loan bank may, after a hearing,
19 order the divestiture by any shareholder of all own-
20 ership interests of such shareholder in the bank, if—

21 “(A) in the opinion of the board of direc-
22 tors, such shareholder has failed to comply with
23 a provision of this Act or any regulation pre-
24 scribed under this Act; or

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1 “(B) the shareholder has been determined
2 to be insolvent, or otherwise subject to the ap-
3 pointment of a conservator, receiver, or other
4 legal custodian, by a State or Federal authority
5 with regulatory and supervisory responsibility
6 for such shareholder.

7 “(4) RETIREMENT OF EXCESS STOCK.—Any
8 shareholder may—

9 “(A) retire shares of Class A stock or, at
10 the option of the shareholder, shares of Class B
11 stock, or any combination of Class A and Class
12 B stock, that are excess to the minimum stock
13 purchase requirements applicable to the share-
14 holder; and

15 “(B) receive from the Federal home loan
16 bank a prompt payment in cash equal to the
17 par value of such stock.

18 “(5) IMPAIRMENT OF CAPITAL.—If the Finance
19 Board or the board of directors of a Federal home
20 loan bank determines that the paid-in capital of the
21 bank is, or is likely to be, impaired as a result of
22 losses in or depreciation of the assets of the bank,
23 the Federal home loan bank shall withhold that por-
24 tion of the amount due any shareholder with respect
25 to any redemption or retirement of any class of

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1 stock which bears the same ratio to the total of such
2 amount as the amount of the impaired capital bears
3 to the total amount of capital allocable to such class
4 of stock.

5 “(6) POLICIES.—Subject to the requirements of
6 this section, the board of directors of each Federal
7 home loan bank shall promptly establish policies,
8 consistent with this Act, governing the capital stock
9 of such bank and other provisions of this section.”.

10 **SEC. 172. INVESTMENTS.**

11 Subsection (j) of section 11 of the Federal Home
12 Loan Bank Act (12 U.S.C. 1431) (as so redesignated by
13 section 166(e) of this subtitle) is amended to read as fol-
14 lows:

15 “(j) INVESTMENTS.—Each bank shall reduce its in-
16 vestments to those necessary for liquidity purposes, for
17 safe and sound operation of the banks, or for housing fi-
18 nance, as administered by the Finance Board.”.

19 **SEC. 173. FEDERAL HOUSING FINANCE BOARD.**

20 Section 2A(b)(1) of the Federal Home Loan Bank
21 Act (12 U.S.C. 1422(b)(1)) is amended—

22 (1) by redesignating subparagraphs (A) and
23 (B) as subparagraphs (B) and (C), respectively;

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1 (2) by inserting before subparagraph (B) (as so
2 redesignated by paragraph (1) of this section) the
3 following new subparagraph:

4 “(A) The Secretary of the Treasury (or the
5 Secretary of the Treasury’s designee), who shall
6 serve without additional compensation.”; and

7 (3) in subparagraph (C) (as so redesignated by
8 paragraph (1) of this section) by striking “Four”
9 and inserting “3”.

10 **Subtitle H—Direct Activities of**
11 **Banks**

12 **SEC. 181. AUTHORITY OF NATIONAL BANKS TO UNDER-**
13 **WRITE CERTAIN MUNICIPAL BONDS**

14 The paragraph designated the Seventh of section
15 5136 of the Revised Statutes of the United States (12
16 U.S.C. 24(7)) is amended by adding at the end the follow-
17 ing new sentence: “In addition to the provisions in this
18 paragraph for dealing in, underwriting or purchasing secu-
19 rities, the limitations and restrictions contained in this
20 paragraph as to dealing in, underwriting, and purchasing
21 investment securities for the national bank’s own account
22 shall not apply to obligations (including limited obligation
23 bonds, revenue bonds, and obligations that satisfy the re-
24 quirements of section 142(b)(1) of the Internal Revenue
25 Code of 1986) issued by or on behalf of any state or politi-

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1 cal subdivision of a state, including any municipal cor-
2 porate instrumentality of 1 or more states, or any public
3 agency or authority of any state or political subdivision
4 of a state, if the national banking association is well cap-
5 italized (as defined in section 38 of the Federal Deposit
6 Insurance Act).”.

7 **Subtitle I—Effective Date of Title**

8 **SEC. 191. EFFECTIVE DATE.**

9 Except with regard to any subtitle or other provision
10 of this title for which a specific effective date is provided,
11 this title and the amendments made by this title shall take
12 effect at the end of the 270-day period beginning on the
13 date of the enactment of this Act.